

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### House Bill 2017

FISCAL  
NOTE

BY DELEGATES STEELE, D. KELLY, B. WARD, BRUCE,  
MILLER, G. WARD, HAYNES, WESTFALL, HIGGINBOTHAM,  
SMITH, AND REYNOLDS

[Introduced February 10, 2021; Referred  
to the Committee on the Judiciary]

1 A BILL to repeal the following sections: §61-1-4, §61-1-5, §61-1-7, §61-1-8, §61-1-9, §61-2-5a,  
2 §61-2-9a, §61-2-9b, §61-2-9c, §61-2-9d, §61-2-10, §61-2-10a, §61-2-10b, §61-2-14a, §61-  
3 2-14b, §61-2-14c, §61-2-14d, §61-2-14e, §61-2-14f, §61-2-14g, §61-2-14h, §61-2-15a,  
4 §61-2-16a, §61-2-26, §61-2-27, §61-2-27a, §61-2-28, §61-2-29, §61-2-29a, §61-2-29b,  
5 §61-2-30, §61-3-20a, §61-3-22a, §61-3-24a, §61-3-24b, §61-3-24c, §61-3-24d, §61-3-  
6 24e, §61-3-24f, §61-3-24g, §61-3-24h, §61-3-39, §61-3-39a, §61-3-39b, §61-3-39c, §61-  
7 3-39d, §61-3-39e, §61-3-39f, §61-3-39g, §61-3-39h, §61-3-39i, §61-3-39j, §61-3-39k,  
8 §61-3-39m, §61-3-39n, §61-3-39o, §61-3-39p, §61-3-39q, §61-3-40, §61-3-41, §61-3-42,  
9 §61-3-43, §61-3-44, §61-3-45, §61-3-45a, §61-3-46, §61-3-47, §61-3-48, §61-3-48a, §61-  
10 3-49, §61-3-49a, §61-3-49b, §61-3-50, §61-3-51, §61-3-52, §61-3-53, §61-3-54, §61-3-  
11 55, §61-3-56, §61-3-57, §61-3-58, §61-3-59, §61-3A-4a, §61-3C-14a, §61-3C-14b, §61-  
12 3C-14c, §61-3E-13, §61-5-12a, §61-5-12b, §61-5-25a, §61-5-27a, §61-5-28, §61-5-29, §61-  
13 6-2, §61-6-3, §61-6-7, §61-6-14a, §61-6-18, §61-6-19, §61-6-20, §61-6-21, §61-6-22,  
14 §61-6-23, §61-6-24, §61-6-25; §61-7-9, §61-8-2, §61-8-9a, §61-8-10, §61-8-20, §61-8-25,  
15 §61-8-26, §61-8B-18, §61-8D-6, §61-8E-1, §61-8E-2, §61-8E-3, §61-9-9, §61-9-10, §61-9-  
16 11, §61-10-7, §61-10-8, §61-10-13, §61-10-14, §61-10-19, §61-10-34, §61-11-1, §61-11-  
17 3, and §61-11A-7 and of the code of West Virginia 1931, as amended; to amend and  
18 reenact §15-12-8 of said code; to amend and reenact §61-1-1, §61-1-2, §61-1-3 said code;  
19 to amend and reenact §61-2-1, §61-2-2, §61-2-3, §61-2-4, §61-2-5, §61-2-6, §61-2-7,  
20 §61-2-8, §61-2-9, §61-2-11, §61-2-12, §61-2-13, §61-2-14, §61-2-15, and §61-2-16 said  
21 code; to amend and reenact §61-3-1, §61-3-2, §61-3-3, §61-3-4, §61-3-5, §61-3-6, §61-  
22 3-7, §61-3-8, §61-3-11, §61-3-12, §61-3-13, §61-3-14, §61-3-15, §61-3-16, §61-3-18,  
23 §61-3-19, §61-3-20, §61-3-21, §61-3-22, §61-3-23, §61-3-24, §61-3-25, §61-3-26, §61-3-  
24 27, §61-3-28, §61-3-29, §61-3-30, §61-3-31, §61-3-32, §61-3-33, §61-3-34, §61-3-35,  
25 §61-3-36, §61-3-37, and §61-3-38 said code; to amend and reenact §61-3A-3 and §61-  
26 3A-7 said code; to amend and reenact §61-3B-2, §61-3B-3, §61-3B-4, §61-3B-5, §61-3B-

27 6, and §61-3B-7 said code; to amend and reenact §61-3C-2, §61-3C-3, §61-3C-4, §61-  
28 3C-5, §61-3C-6, §61-3C-7, §61-3C-8, §61-3C-9, §61-3C-10, §61-3C-11, §61-3C-12, §61-  
29 3C-13, §61-3C-14, §61-3C-15, §61-3C-16, §61-3C-17, §61-3C-18, §61-3C-19, §61-3C-  
30 20, §61-3C-21; to amend and reenact §61-3D-2 and §61-3D-3 said code; to amend and  
31 reenact §61-3E-1, §61-3E-3, §61-3E-4, §61-3E-5, §61-3E-6, §61-3E-7, §61-3E-8, §61-  
32 3E-9, §61-3E-10, and §61-3E-12 said code; to amend and reenact §61-4-1, §61-4-2, §61-  
33 4-3, §61-4-4, §61-4-5, §61-4-6, §61-4-7, §61-4-8, and §61-4-9 said code; to amend and  
34 reenact §61-5-1, §61-5-2, §61-5-3, §61-5-4, §61-5-5, §61-5-6, §61-5-7, §61-5-8, §61-5-9,  
35 §61-5-10, §61-5-11, §61-5-12, §61-5-13, §61-5-14, §61-5-15, §61-5-16, §61-5-17, §61-5-  
36 18, §61-5-19, §61-5-20, §61-5-21, §61-5-22, §61-5-23, §61-5-24, §61-5-25, §61-5-26, and  
37 §61-5-27 said code; to amend and reenact §61-5A-9 said code; to amend and reenact  
38 §61-6-6, §61-6-11, §61-6-12, §61-6-13, §61-6-14, §61-6-15, §61-6-16, and §61-6-17; §61-  
39 6-1, §61-6-1a, and §61-6-1b of said code; to amend and reenact §61-7-3, §61-7-4, §61-  
40 7-4a, §61-7-7, §61-7-10, §61-7-11, §61-7-11a, §61-7-12, §61-7-14, §61-7-15, and §61-7-  
41 15a said code; to amend and reenact §61-8-1, §61-8-5, §61-8-6, §61-8-7, §61-8-8, §61-  
42 8-9, §61-8-11, §61-8-12, §61-8-14, §61-8-15, §61-8-16, §61-8-19, §61-8-19a, §61-8-19b,  
43 §61-8-19c, §61-8-21, §61-8-22, §61-8-23, §61-8-27, 61-8-27a, §61-8-28, §61-8-28a, §61-  
44 8-29, §61-8-30, and §61-8-31 said code; to amend and reenact §61-8A-1, §61-8A-2, §61-  
45 8A-4, and §61-8A-5 said code; to amend and reenact §61-8B-3, §61-8B-4, §61-8B-5, §61-  
46 8B-7, §61-8B-8, §61-8B-9, §61-8B-9b, §61-8B-10 and §61-8B-12 of said code; to amend  
47 and reenact §61-8C-1, §61-8C-2, §61-8C-3, §61-8C-3a, and §61-8C-3b said code; to  
48 amend and reenact §61-8D-1, §61-8D-2, §61-8D-2a, §61-8D-3, §61-8D-3a, §61-8D-4,  
49 §61-8D-4a, §61-8D-5, §61-8D-5a, §61-8D-7, §61-8D-8, and §61-8D-10 said code; to  
50 amend and reenact §61-9-1, §61-9-2, §61-9-3, §61-9-4, §61-9-5, §61-9-6, §61-9-7, and  
51 §61-9-8 said code; to amend and reenact §61-10-1, §61-10-2, §61-10-3, §61-10-4, §61-  
52 10-5, §61-10-6, §61-10-9, §61-10-10, §61-10-11, §61-10-11a, §61-10-11b, §61-10-15, §

53 61-10-16, §61-10-17, §61-10-20, §61-10-21, §61-10-22, §61-10-23, §61-10-30, §61-10-  
54 31, §61-10-32, and §61-10-33, said code; to amend and reenact §61-11-1a, §61-11-6,  
55 §61-11-8, and §61-11-8a of said code; to amend and reenact §61-12-8, §61-12-9, and  
56 §61-12-13 of said code; to amend and reenact §61-13-3 of said code; to amend and  
57 reenact §61-14-2, §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, and §61-14-8 of  
58 said code; to amend and reenact §61-15-2 and §61-16-2 of said code; to amend said code  
59 by adding thereto a new section, designated §30-29-9a; to amend said code by adding a  
60 new section, designated §55-2-23; to amend said code by adding thereto nine new  
61 sections, designated §61-2-17, §61-2-18, §61-2-19, §61-2-20, §61-2-21, §61-2-22, §61-  
62 2-23, §61-2-24, and §61-2-25; to amend said code by adding thereto two new sections,  
63 §61-3-9, §61-3-10, and §61-3-17; to amend said code by adding thereto a new section,  
64 designated §61-3B-8; to amend said code by adding thereto two new sections, §61-3C-  
65 22 and §61-3C-23; to amend said code by adding thereto a new article, designated §61-  
66 3F-1, §61-3F-2, §61-3F-3, §61-3F-4, §61-3F-5, §61-3F-6, §61-3F-7, §61-3F-8, §61-3F-9,  
67 §61-3F-10; §61-3F-11, §61-3F-12, §61-3F-13, §61-3F-14, §61-3F-15, V§61-3F-16, and  
68 §61-3F-17; to amend said code by adding thereto a new section designated §61-4-10; to  
69 amend said code by adding thereto following five new sections, designated §61-8-5a, §61-  
70 8-6a, §61-8-8a, and §61-8-8b, to amend said code by adding thereto six new sections,  
71 designated §61-8B-4a, §61-9-6a, §61-10-1a, §61-10-9a, §61-10-9b, and §61-10-10a; to  
72 amend said code by adding thereto a new article designated §61-17-1, §61-17-2, §61-17-  
73 3, §61-17-4, §61-17-5, and §61-17-6; and to amend said code by adding a new article  
74 designated §61-18-1, §61-18-2, §61-18-3, and §61-18-4; all relating to railroad employees  
75 being conservators of the peace; special railroad policemen; and the powers and duties  
76 of the same; relating to shooting ranges; limitations on nuisance actions; and noise  
77 ordinances; relating generally to criminal activity and the punishment thereof; relating to  
78 crimes against the government, treason, the definition of the crime of treason, and

79 penalties therefor, the crime of failure to give information of treason and its penalty, and  
80 the crime of desecration of the flag, and its penalty; relating to crimes against the person,  
81 first and second degree murder defined, and punishment for the same; delineating  
82 provisions for allegations in indictment for homicide; defining voluntary manslaughter and  
83 the penalty thereof; defining involuntary manslaughter, and specifying the penalty for the  
84 same; defining concealment of a deceased human body, and specifying the penalty for  
85 the same; clarifying that Homicide is punishable within the state if injury occurs within and  
86 death without, or vice versa; defining an attempt to kill or injure by poison, and specifying  
87 the penalty for the same; defining the crime of abortion and the penalty for the same;  
88 defining malicious or unlawful assault, assault, and battery, and specifying the penalties  
89 for each and aggravated factors and enhanced penalties; explaining provisions of  
90 sentencing for such acts committed by incarcerated persons; defining assault during the  
91 commission of or attempt to commit a felony, and specifying the penalty for the same;  
92 delineating that for violent crimes against the elderly a sentence is not subject to  
93 suspension or probation; defining harassment, and providing penalties, and certain  
94 definitions for the same; defining strangulation, suffocation, and asphyxiation and  
95 providing definitions and penalties for the same; defining robbery or attempted robbery  
96 and specifying the penalties for the same; defining extortion, and attempted extortion by  
97 threat, and specifying the penalty for these; defining kidnapping and specifying penalties  
98 for the same; defining concealment or removal of a minor child from custodian or from  
99 person entitled to visitation; and setting forth penalties and defenses for the same;  
100 providing that one aiding or abetting in kidnapping or in concealing or removing a minor  
101 child is guilty as a principal, and explaining venue for those offenses; defining unlawful  
102 restraint and providing penalties for the same; prohibiting the purchase or sale of a child,  
103 setting the criminal penalty for the same, and providing definitions and exceptions; the  
104 failure to remove doors from abandoned refrigerators, freezers and other appliances, and

105 providing penalties for the same; providing definitions for various forms of domestic  
106 violence and criminal penalties; providing definitions and criminal penalties for the abuse  
107 or neglect of an incapacitated adult; providing criminal penalties for the death of an  
108 incapacitated adult by a caregiver; defining and providing criminal penalties for the  
109 financial exploitation of an elderly person, protected person or incapacitated adult;  
110 recognizing an embryo or fetus as a distinct unborn victim of certain crimes of violence  
111 against the person; relating to crimes against property; arson; the degrees of arson, and  
112 definitions and criminal penalties for the same; burning, or attempting to burn, insured  
113 property and the criminal penalty for the same; causing injuries during an arson-related  
114 crime, and the criminal penalties for the same; recovery of costs incurred in fighting fires  
115 caused by arson; defining burglary, the entry of dwelling house or outbuilding, and  
116 providing criminal penalties for the same; defining entry of a house, building, vehicle, or  
117 enclosed property, the criminal penalties for the same, and specifying counts in indictment  
118 for the same; manufacture or possession of burglary tools, and the criminal penalties for  
119 the same; setting forth criminal offenses involving theft detection shielding devices, their  
120 criminal penalties and providing for detention of persons suspected of this offense; grand  
121 larceny, aggravated grand larceny, and petit larceny distinguished, setting forth the  
122 criminal penalties for each, defining larceny of bank notes, checks, writings of value and  
123 book accounts, and delineating the determination of value in larceny; explaining receiving  
124 or transferring stolen goods and providing a criminal penalty; providing a criminal penalty  
125 for bringing into this state, receiving or disposing of property stolen in another state;  
126 embezzlement, and the criminal penalties for the same; falsifying accounts, and the  
127 criminal penalties for the same; Possession or use of automated sales suppression  
128 devices, and the criminal penalties for the same; the offenses of destroying or concealing  
129 a will, and embezzlement by fiduciary, and the criminal penalties for the same; obtaining  
130 money, property and services by false pretenses, disposing of property to defraud

131 creditors, and the criminal penalties for each of these; the offenses of attempted or  
132 fraudulent use, forgery, traffic of credit cards, possession and transfer of credit cards and  
133 credit card making equipment, the false or fraudulent use of telephonic services, and the  
134 criminal penalties for these offenses; intercepting or monitoring customer telephone calls,  
135 and the criminal penalties for the same; requirements for finding fraudulent schemes and  
136 provisions for the cumulation of amounts where a common scheme exists, and the criminal  
137 penalties for the same; the casting away, destroying, or interfering with floating craft or  
138 material, and the criminal penalties for the same; interference with or destruction of buoys,  
139 signal lights or other aids to navigation, and the criminal penalties for the same; the offense  
140 of malicious killing of animals by poison or otherwise, and the criminal penalties for the  
141 same; the removal out of a county of property securing a claim, and the criminal penalties  
142 for such offense; the fraudulent disposition of personal property in possession by virtue of  
143 lease, notice to return, failure to return, and penalties where such property is not returned;  
144 noting a right to immediate possession in such instances; making a false statement as to  
145 financial condition of person, firm or corporation, and the criminal penalty for the same;  
146 publication of false advertisements, and the criminal penalty for the same; fraudulently  
147 obtaining food or lodging, and the criminal penalty for the same; intoxication of a person  
148 in charge of locomotive engine or car, and the criminal penalty for the same; the offenses  
149 of jumping on or off car or train in motion; driving vehicle upon track or bridge except at  
150 crossings, and the criminal penalty for the same; procuring gas, water or electricity, by  
151 device, with intent to defraud, and the criminal penalty for the same; placing a dam or  
152 obstructions in watercourses, and the criminal penalty for the same; setting forth  
153 requirements for the purchase of scrap metal by scrap metal purchasing businesses,  
154 salvage yards, or recycling facilities; requiring certificates, records, and reports of such  
155 purchases; providing criminal penalties for violations of these provisions; setting forth  
156 requirements for the purchase of items by precious metals and gem dealers, records to

157 be kept by them, and delineating prohibited acts, and the criminal penalty for the same;  
158 criminalizing the unauthorized use of dumpsters and setting forth penalties; defining the  
159 offense of identity theft and providing a penalty; criminalizing the failure to pay for gasoline  
160 and providing a penalty; the offense of scanning device or re-encoder fraud, delineating  
161 when it is a felony; providing definitions; and setting forth criminal penalties for the same;  
162 the offense of possession of bogus receipts or universal product codes with intent to  
163 defraud, and the criminal penalties for the same; the offense of misrepresentation of past  
164 or present military status or military awards to obtain anything of value, and delineating  
165 criminal penalties for the same; relating to shoplifting; prescribing penalties; defining the  
166 crime of organized retail theft, and providing penalties for that offence, all relating to  
167 trespass; trespass in a structure or conveyance and penalties for the same; trespass on  
168 property other than a structure or conveyance and penalties for the same; trespass on  
169 student residence premises or student facility premises of an institution of higher  
170 education and penalties for the same; trespass on state government property; aiding and  
171 abetting; penalties for each of those offenses; defining the offense of mine trespass, and  
172 penalties for the same; defining animal or crop facilities trespass; providing penalties for  
173 the same; allowing for injunctive relief in such instances; offenses involving damage to  
174 shrubbery, flowers, trees and timber; providing for a limitation of application of the relevant  
175 subsection, and providing penalties; prohibiting cutting, damaging, or carrying away  
176 without written permission, any timber, trees, growing plants or the products thereof; treble  
177 damages provided for the same; creating the Critical Infrastructure Protection Act; defining  
178 terms relevant to the same; prohibiting certain acts, including trespass and conspiracy to  
179 trespass against property designated a critical infrastructure facility; providing criminal  
180 penalties; and, allowing for certain forms of civil action in such instances; relating to the  
181 West Virginia Computer Crime And Abuse Act, defining terms; computer fraud; access to  
182 legislative or state-owned computer; criminal penalties for the same; unauthorized access

183 to computer services and criminal penalties for the same; unauthorized possession of  
184 computer data or programs and criminal penalties for the same; unauthorized possession  
185 of computer data or programs and criminal penalties for the same; alteration, destruction,  
186 etc., of computer equipment, and criminal penalties for the same; unauthorized  
187 possession of computer information, and criminal penalties for the same; disclosure of  
188 computer security information and criminal penalties for the same; computer invasion of  
189 privacy and criminal penalties for the same; fraud and related activity in connection with  
190 access devices, and criminal penalties for the same; endangering public safety, and  
191 criminal penalties for the same; obscene, anonymous, harassing and threatening  
192 communications by computer, cell phones and electronic communication devices, and  
193 criminal penalties for the same; soliciting, etc. a minor via computer; soliciting a minor and  
194 traveling to engage the minor in prohibited sexual activity; cyberbullying or specific acts of  
195 electronic harassment of minors; definitions; criminal penalties for the same; exceptions;  
196 use of a computer as an instrument of forgery; civil relief and damages available; defenses  
197 to criminal prosecution; venue; prosecution under other criminal statutes not prohibited;  
198 personal jurisdiction; and, severability; relating to the theft of cable television services, the  
199 acquisition of cable television services, and penalties for wrongfully acquitting the same;  
200 sale or transfer of a device or plan intended for acquisition or diversion, and criminal  
201 penalties for the same; Illegal possession of destructive devices, explosive materials or  
202 incendiary devices; and the criminal penalty for the same; criminal use of destructive  
203 device, explosive material or incendiary device; and the criminal penalty for the same;  
204 causing accidental or intentional death or injury; penalties; causing death or injury to an  
205 explosives detection animal; and the penalty for the same; manufacture, purchase, sale,  
206 advertising for sale, transporting or possession or use of a hoax bomb; possession or use  
207 in commission of a felony; and the penalty for the same; theft of explosive material from  
208 storage magazines or buildings; and the penalty for the same; receipt, possession,

209 storage, sale or transportation of stolen explosive material; and the criminal penalty;  
210 wanton endangerment involving destructive devices, explosive materials or incendiary  
211 devices; and the criminal penalty; contraband, seizure, forfeiture of explosive devices;  
212 relating to crimes involving worthless checks; obtaining property in return for worthless  
213 check, and the criminal penalties for the same; making, issuing, etc., worthless checks on  
214 a preexisting debt, and the criminal penalties for the same; payment as a defense to such  
215 offenses; requiring making a statement for the reason for dishonor a duty of the drawee;  
216 defining what constitutes prima facie evidence of knowledge, setting forth requirements  
217 for identity, and providing a criminal penalty for providing false information; requiring a  
218 notice of dishonor by payee, and providing for a service charge; prescribing manner of  
219 filing complaint for warrant and the form thereof; providing guidance for a complaint, what  
220 constitutes notice of complaint, and the issuance of a warrant; delineating payment  
221 procedures, and imposing costs; providing for the payment of costs in worthless check  
222 cases, and the disposition of certain costs; requiring the preparation of a list of worthless  
223 check warrants; the use of that worthless check list upon receipt of complaint for warrant;  
224 delineating the duties of a prosecuting attorney upon receipt of notice of multiple worthless  
225 check warrants; requiring the magistrate court clerk to advise complainant; providing for  
226 the creation and operation of a program for worthless check offenders, and requirements  
227 for acceptance of a person in that program; requiring certain notice to persons accepted  
228 to the worthless check restitution program; agreement to suspend prosecution of a person  
229 accepted into the restitution program; providing for fees for participation in the worthless  
230 check restitution program; and, providing that statements by individuals referred to or  
231 participating in the worthless check restitution program are criminally inadmissible; relating  
232 to forgery, crimes against the currency, the forgery of public records, certificates, returns  
233 or attestation of a court or officer; and the criminal penalty for the same; forgery of official  
234 seals; keeping or concealing instrument for forging same; and the criminal penalty for the

235 same; counterfeiting, and the criminal penalty for the same; making plates, etc., for  
236 forgery; possession of same; and the criminal penalty for that offense; forging or uttering  
237 other writing and the criminal penalty for the same; creation of unauthorized demand draft.  
238 possession of counterfeit currency with intent to utter; and the criminal penalty for the  
239 same; unauthorized currency, and the criminal penalty for the same; passing or receiving  
240 unauthorized currency knowingly, and the criminal penalty for the same; and, the  
241 unauthorized use, transfer, acquisition, alteration or possession of certain benefits and the  
242 criminal penalty for the same; payment cards and falsely making or lading the same, and  
243 the criminal penalty therefore; relating to crimes against public justice generally; perjury  
244 and subornation of perjury defined; false swearing defined, and the criminal penalties for  
245 perjury, subornation of perjury, and false swearing; aiding escape and other offenses  
246 relating to adults and juveniles in custody or confinement; and criminal penalties for the  
247 same; permitting escape; refusal of custody of prisoner; and criminal penalties for the  
248 same; persons in custody of institutions or officers. escapes and aiding in escapes; and  
249 criminal penalties for the same; terms of confinement in addition to previous sentence;  
250 escapes from, and other offenses relating to, state benevolent and correctional institution,  
251 or private prison or mental health facilities and criminal penalties for the same; escape  
252 from custody of the commissioner of corrections and criminal penalties for the same;  
253 escape from custody of the director of juvenile services; refusal of officer to make, or delay  
254 in making, arrest; and criminal penalties for the same; refusal of person to aid officer and  
255 criminal penalties for the same; refusal of officer to execute act or process of legislature  
256 or order of governor; and criminal penalty for the same; obstructing officer; fleeing from  
257 officer; making false statements to officer; interfering with emergency communications;  
258 criminal penalties for the same; definition; officer not liable for act done under statute or  
259 executive order afterward declared unconstitutional; compounding offenses and  
260 misprision and criminal penalties for the same; exacting excessive fees and criminal

261 penalties for the same; issuing fraudulent fee bills and criminal penalties for the same.  
262 alteration, concealment or destruction of public record by officer and criminal penalty for  
263 the same; larceny, concealment or destruction of public record by person not officer; and  
264 criminal penalty for the same; corrupt summoning of jurors to find biased verdict; and  
265 criminal penalty for the same; procuring the summoning of biased juror by party other than  
266 officer; and criminal penalty for the same; discrimination against employee summoned for  
267 jury duty; and criminal penalty for the same; contempt of court; what constitutes contempt;  
268 jury trial; presence of defendant; criminal penalty for the same; fraudulent official  
269 proceedings; causing a public employee or official to file a fraudulent legal process and  
270 criminal penalty for the same; impersonation of a public official, employee or tribunal; and  
271 criminal penalties for the same; impersonation of a public official or tribunal; impersonation  
272 of a law-enforcement officer; and criminal penalties for the same; subsequent offense;  
273 failure to perform official duties and criminal penalty for the same; the failure to meet an  
274 obligation to pay support to a minor and criminal penalties for the same; relating to bribery  
275 and corrupt practices, and the criminal penalties for such offenses; relating to crimes  
276 against the peace generally; mobs and lynching, and the criminal penalties for the same;  
277 liability of county or city in such instances; disturbance of religious worship and the criminal  
278 penalty for the same; disturbance of schools, societies, and other assemblies and the  
279 criminal penalty for the same; loitering on school property and the criminal penalty for the  
280 same; exceptions. camping upon governmental grounds or lawns and the criminal penalty  
281 for the same; public nuisance. false reports concerning bombs or other explosive devices  
282 and the criminal penalty for the same. falsely reporting an emergency incident and the  
283 criminal penalty for the same. willful disruption of governmental processes; offenses  
284 occurring at State Capitol Complex; and the criminal penalties for the same; threats of  
285 terrorist acts, conveying false information concerning terrorist acts and committing terrorist  
286 hoaxes prohibited; and the criminal penalties for the same prohibiting violations of an

287 individual's civil rights; and the criminal penalties for the same; wearing masks, hoods or  
288 face coverings and the criminal penalty for the same; and falsely reporting child abuse  
289 and the criminal penalty for the same; classifying criminal penalties for failing to register  
290 as a sex offender, failure to provide information change, and providing false information  
291 to the sex offender registry; deleting requirement that a person be deemed a rioter if they  
292 failed to provide required assistance at a riot; classify the penalty for crime of failure to  
293 obey an order given at a riot or unlawful assembly; providing that the crime of disorderly  
294 conduct is a petty offense; defining the crime of bigamy; providing a misdemeanor penalty  
295 for bigamy; providing definitions related to the crimes of pimping, prostitution and  
296 pandering; defining the crime of prostitution; providing the penalty for prostitution;  
297 providing that a medical report certifying no sexually transmitted disease reduces penalty  
298 for prostitution; providing criminal penalty for solicitation of prostitute; providing enhanced  
299 criminal penalty for solicitation of an individual for prostitution who is less than 18 years of  
300 age, mentally defective or incapacitated; providing fines for soliciting prostitution be paid  
301 to the Crime Victims Compensation Fund in designated circumstances; clarifying the crime  
302 pandering; providing that a second offense of pandering, recruitment involving coercion  
303 or force, and recruitment of persons under the age of 18 are felony offenses; establishing  
304 that parents consenting to using a minor or mentally defective person for prostitution is  
305 guilty of a felony; establishing that causing a person to engage in prostitution because of  
306 debt or to receive value is subject to misdemeanor penalty; establishing that a person who  
307 forces, intimidates or threatens a spouse to engage in prostitution commits a felony  
308 offense; providing respective criminal penalties; establishing the criminal offense of  
309 abducting, enticing or harboring a child for prostitution; providing a criminal penalty;  
310 establishing the crime of promoting and advancing prostitution; defining a house of  
311 prostitution in context of promoting prostitution; permitting character evidence; providing  
312 criminal penalty, including additional fine; establishing the offense of sexual solicitation;

313 providing a criminal penalty including additional fine; providing an affirmative defense to  
314 sexual solicitation for victims of trafficking; providing affirmative defenses to prostitution  
315 relating to human trafficking, abduction and mental defect or incapacitation; establishing  
316 aggravating circumstances, restitution and eligibility for Compensation Award to Victims  
317 of Crimes; providing that law enforcement notify DHHR of child victims; providing that any  
318 property used for or derived from prostitution is subject to forfeiture; providing that persons  
319 convicted be debarred from state or local contracts; clarifying that criminal indecent  
320 exposure cannot occur if victim grants permission; classifies criminal penalties for  
321 indecent exposure; classifies criminal penalties for inhaling or drinking certain intoxicating  
322 compounds; defines "step-relative" in context of the crime of incest; establishes that  
323 intercourse between two consenting adult step-relatives is not incest; classifies criminal  
324 penalty for incest; defines desecration and classifies criminal penalties for unlawful  
325 disinterment, desecration, injury to a grave marker or damage to cemetery; prohibits  
326 certain demonstrations at a funeral; classifies criminal penalty for prohibited funeral  
327 demonstrations; classifies criminal penalty for obscene, anonymous and threatening  
328 phone calls; classifies criminal penalties for cruelty to animals; classifies criminal penalty  
329 for animal fighting; classifies criminal penalty for attending an animal fighting venture;  
330 classifies criminal penalty for wagering at an animal fighting venture; establishes  
331 circumstances, sufficiency and application of a search warrant related to animal cruelty;  
332 extends search warrant authority for birds or animals kept for fighting to natural resources  
333 police; clarifies extent of searches without a warrant for fighting animals or birds;  
334 classifying criminal penalty for unlawful admission of children to places injurious to health  
335 or morals; classifying criminal penalty for under age false identification; classifying criminal  
336 penalty for criminal invasion of privacy; classifying criminal penalty for nonconsensual  
337 public disclosure of private intimate images; classifying criminal penalty for criminal  
338 loitering within certain distances of minor victims of sexually violent offenses or offenses;

339 classifying penalties for disclosing or making photographs of accident or emergent  
340 situations public; classifying penalties for therapeutic deception; classifying penalties for  
341 therapeutic deception; expanding definition of computer applied to obscene matter and  
342 minors; classifying criminal penalties for distribution and display to minor of obscene  
343 matter; classifying criminal penalties for use of obscene matter with intent to seduce minor;  
344 classifying criminal penalties for use of minor to produce obscene matter or assist in doing  
345 sexually explicit conduct; classifying criminal penalties for sexual assault in the first  
346 degree; classifying criminal penalties for sexual assault in the second degree; providing  
347 definitions of terms related to the criminal offense of sexual extortion; establishing the  
348 elements of the crime of sexual extortion; classifying criminal penalties for sexual assault  
349 in the third degree; classifying criminal penalties for sexual abuse in the first degree;  
350 classifying criminal penalties for sexual abuse in the second degree; classifying criminal  
351 penalties for sexual abuse in the third degree; classifying criminal penalties for imposition  
352 of sexual acts on persons incarcerated or under supervision; providing a definitions of  
353 “coerce” and “visually portray” in the context of the crime of filming sexually explicit conduct  
354 of minors; classifying criminal penalty for producing a visual portrayal of a minor in sexually  
355 explicit conduct; providing for enhanced penalty when parent distributes material  
356 displaying a child under their care in sexually explicit conduct; classifying penalties when  
357 any person distributes or exhibits material displaying a minor in sexually explicit conduct;  
358 classifying penalties for production, display or distribution of visual portrayals of partially  
359 clothed minors; defining “visual portrayal” in context of prohibited possession, manufacture  
360 or distribution of inappropriate sexual portrayals by a minor; clarifying the definition of  
361 “parent” in context of child abuse to include step or foster parent; classifying criminal  
362 penalties for murder of custodial child for failure or refusal to supply necessities; clarifying  
363 definition of “recognized method of religious healing” in context of murder of custodial child  
364 for failure or refusal to supply necessities; classifying criminal penalties for death of a child

365 by child abuse; classifying criminal penalties for child abuse causing or creating a risk of  
366 injury; classifying the criminal penalty for female genital mutilation; classifying the criminal  
367 penalty for child neglect resulting in death; in context of the crime of child neglect resulting  
368 in death, clarifying that care through recognized method of religious healing in lieu of  
369 medical treatment may not constitute neglect; defining recognized method of religious  
370 healing; classifying the criminal penalty for sexual abuse by a parent, guardian, custodian  
371 or person in a position of trust to a child; classifying the criminal penalty for procuring,  
372 authorizing or inducing another to engage in sexual acts with a child under their care or  
373 custody; sexual abuse by a parent, guardian, custodian or person in a position of trust to  
374 a child; parent, guardian, custodian, or person in a position of trust procuring, authorizing,  
375 inducing a to a child sixteen or older; definition of terms related to nuisances; designated  
376 elements for maintaining a nuisance; providing standing to bring an action to abate a  
377 nuisance; venue for a nuisance action; evidence and proof related to an action to abate  
378 nuisance; provisions and procedures related to an action to enjoin a nuisance; prima facie  
379 evidence of a nuisance; prosecution of a nuisance complaint; provisions for dismissal of  
380 a nuisance action; award of costs related to a nuisance action; when existence of  
381 nuisance established permanent injunction required; order of abatement for a nuisance;  
382 elements of a nuisance abatement order; removal and sale of movable property from a  
383 nuisance; liability of officers disposing of property from a nuisance proceeding; criminal  
384 offense of contempt related to nuisance proceedings; definitions related to gaming and  
385 gambling; criminal offense for possessing or dealing in unlicensed gaming devices;  
386 seizure of unlicensed gaming or gambling devices; criminal offense for permitting a  
387 gambling device on premises under unauthorized ownership, leasehold, occupation or  
388 possession; criminal offense of acting as a guard or interfering with lawful intervention for  
389 gambling premises; criminal offense of unauthorized wagering on outcomes of uncertain  
390 events or prohibited games; criminal offense for a unauthorized commercial gambling at

391 a hotel or tavern; criminal offense for cheating at gambling; criminal offense of  
392 unauthorized dealing in gambling device; criminal offense of unauthorized installation of a  
393 gaming device; criminal offense for unauthorized sale of a voucher or certificate for  
394 gambling on outcome of sporting events, games of skill or other sport or contest; declaring  
395 premises for unauthorized commercial gambling a nuisance; defining lottery and raffle;  
396 criminal offense for unauthorized operation of a lottery or raffle; criminal offense of  
397 keeping policy or numbers slips; seizure of designated gambling devices and equipment;  
398 provides seizure authority for gambling articles or apparatuses; classifying criminal  
399 penalties for crime of certain public officials with pecuniary interest in certain public  
400 contracts; classifying the criminal offense of unlawful showing of pictures, advertisement  
401 or theatrical productions calculated to arouse prejudicial ire or feelings; classifying the  
402 criminal offense of lobbying on the floor of the legislature; classifying the crime of  
403 employers who fail or refuse to pay contracted employment benefits or contributions;  
404 classifying the crime of unlawful use of the prefix of Doctor; classifying the criminal penalty  
405 for bribery; clarifying the elements of the crime of bribery; classifying the criminal penalty  
406 for debt pooling; clarifying the elements of the crime of debt pooling; classifying the  
407 criminal penalty for failure to maintain and affix a cover for a water well; classify the penalty  
408 for the crime of conspiracy; classify the penalty for the crime of unlawful contact with a  
409 corrections employee or a member of the parole board; classify the penalty for prohibited  
410 sale of certain caffeine products; classify the criminal penalties in the Critical Infrastructure  
411 Protection Act; classify the criminal penalties for punishment of principals in the second  
412 degree and designated accessories; classify the criminal penalties for attempted crimes;  
413 classify the criminal penalties for solicitation to commit certain crimes; classify the criminal  
414 penalties for crimes related to post mortem examinations; classify the criminal penalties  
415 for failing to secure a cremation permit; clarify evidentiary admissibility of autopsy reports  
416 an investigations; classify the penalties for organized criminal enterprise offenses; classify

417 the criminal penalties for the offense of human trafficking; classify the criminal penalties  
418 for the offense of forced labor; classify the criminal penalties for the offense of using adults  
419 or minors in debt bondage; classify the criminal penalties for the offense of coercing or  
420 compelling an individual to engage in commercial sexual; classify the criminal penalties  
421 for the offense of patronizing a victim of sexual servitude; establishing that an individual  
422 convicted of a human trafficking offense who is sentenced to life without mercy is not  
423 eligible for parole; classify the criminal penalty for money laundering; classify the criminal  
424 penalty for prohibited use of unmanned aircraft systems; classify criminal offenses and  
425 respective sentencing dispositions; establishing that felonies are classified into six  
426 categories and misdemeanors are classified into three categories; providing that petty  
427 offenses are not classified; establishing that criminal classification is derived from the  
428 defining criminal section or chapter; establishing that petty offenses are specifically  
429 designated to include any crime without specified designation or classification; providing  
430 that offenses noted outside Chapter 61 which are not designated as a felony,  
431 misdemeanor or petty offense, are punished under the prescribed statutory penalty;  
432 unless provided otherwise felony imprisonment sentence is a term of definite years;  
433 establishes respective range of felony terms of imprisonment into six classifications;  
434 establishes respective range of misdemeanor terms of imprisonment within three  
435 classifications; providing discretion to the sentencing court to treat a class 6 felony as a  
436 class 1 misdemeanor with noted exceptions; providing the trial court impose its sentence  
437 within designated range of maximum and minimum terms; requiring the court to consider  
438 aggravating and mitigating circumstances as well as the pre-sentence report; providing  
439 potential increased sentence for crimes near a school which may exceed maximum  
440 sentencing limits; provides that a felony sentence must be a definite term of years served  
441 in the state department of corrections; establishes requirements for transfer of custody;  
442 provides a range of imprisonment term for all six felony classes; providing that

443 misdemeanor sentences are for a definite term to be served at somewhere other than the  
 444 state department of corrections; establishes respective limitations of imprisonment for the  
 445 three classes of misdemeanors; provides discretion to the court in certain circumstances,  
 446 to treat a class 6 felony as a class 1 misdemeanor; provides for reimbursement of  
 447 incarceration costs for misdemeanor offenses; provides court with discretion to increase  
 448 sentence by one year for offenses near a school; establishes that school vicinity sentence  
 449 enhancement may exceed statutory limit; further providing that if the victim offense is a  
 450 child but is not within the designated range of a school the court may consider relevant  
 451 circumstances and increase the sentence two years; establishing fines for felony offenses;  
 452 establishing fines for misdemeanor offenses; for purposes of sentencing, defines an  
 453 "enterprise" as any entity other than a person; provides graduated penalty of fines  
 454 imposed upon enterprise for criminal offenses; establishes that a judgment of fine against  
 455 an enterprise constitutes a lien; establishes relevant factors for the court to consider when  
 456 sentencing an enterprise for criminal conduct; requires the court to order a person  
 457 incarcerated for a criminal offense to pay incarceration costs; and, establishes factors for  
 458 the court to consider when assessing payment of incarceration costs.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 15. PUBLIC SAFETY.**

### **ARTICLE 12. SEX OFFENDER REGISTRATION ACT.**

#### **§15-12-8. Failure to register or provide notice of registration changes; penalty; penalty for aiding and abetting.**

1 (a) Each time a person has a material change in any of the registration information as  
 2 required by §15-12-3 of this code this article and knowingly fails to register the change or changes,  
 3 each failure to register each separate item of information changed shall constitute a separate  
 4 offense under this section.

5 (b) Except as provided in this section, any person required to register for ten years  
6 pursuant to subdivision (1), subsection (a), section four of this article who knowingly provides  
7 materially false information or who refuses to provide accurate information when so required by  
8 the terms of this article, or who knowingly fails to register or knowingly fails to provide a material  
9 change in any required information as required by this article, is guilty of a class 1 misdemeanor.  
10 ~~and, upon conviction thereof, shall be fined not less than \$250 nor more than \$10,000 or confined~~  
11 ~~in jail not more than one year, or both~~ Any person convicted of a second offense under this  
12 subsection is guilty of a class 6 felony. ~~and, upon conviction thereof, shall be imprisoned in a state~~  
13 ~~correctional facility for not less than one year nor more than five years. Any person convicted of~~  
14 ~~a third or subsequent offense under this subsection is guilty of a class 3 felony. and, upon~~  
15 ~~conviction thereof, shall be imprisoned in a state correctional facility for not less than five nor more~~  
16 ~~than twenty-five years~~

17 (c) Any person required to register for life pursuant to this article who knowingly provides  
18 materially false information or who refuses to provide accurate information when so required by  
19 the terms of this article, or who knowingly fails to register or knowingly fails to provide a material  
20 change in any required information as required by this article, is guilty of a class 6 felony. ~~and,~~  
21 ~~upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one~~  
22 ~~year nor more than five years~~ Any person convicted of a second or subsequent offense under this  
23 subsection is guilty of a class 3 felony. ~~and, upon conviction thereof, shall be imprisoned in a state~~  
24 ~~correctional facility for not less than ten nor more than twenty-five years~~

25 (d) In addition to any other penalty specified for failure to register under this article, any  
26 person under the supervision of a probation officer, parole officer or any other sanction short of  
27 confinement in jail or prison who knowingly refuses to register or who knowingly fails to provide a  
28 material change in information as required by this article shall be subject to immediate revocation  
29 of probation or parole and returned to confinement for the remainder of any suspended or  
30 unserved portion of his or her original sentence.

31 (e) Notwithstanding the provisions of subsection (c) of this section, any person required to  
32 register as a sexually violent predator pursuant to this article who knowingly provides materially  
33 false information or who refuses to provide accurate information when so required by terms of  
34 this article or who knowingly fails to register or knowingly fails to provide a change in any required  
35 information as required by this article is guilty of a class 5 felony, ~~and, upon conviction thereof,~~  
36 ~~shall, for a first offense, be confined in a state correctional facility not less than two nor more than~~  
37 ~~ten years~~ and for a second or subsequent offense, is guilty of a class 2 felony. ~~and, shall be~~  
38 ~~confined in a state correctional facility not less than fifteen nor more than thirty-five years~~

39 (f) Any person who knows or who has reason to know that a sex offender is not complying,  
40 or has not complied, with the requirements of this section and who, with the intent to assist the  
41 sex offender in eluding a law-enforcement agency that is seeking to find the sex offender to  
42 question the sex offender about, or to arrest the sex offender for, his or her noncompliance with  
43 the requirements of this section:

44 (1) Withholds information from, the law-enforcement agency about the sex offender's  
45 noncompliance with the requirements of this section and, if known, the whereabouts of the sex  
46 offender; or

47 (2) Harbors, or attempts to harbor, or assists another person in harboring or attempting to  
48 harbor, the sex offender; or

49 (3) Conceals or attempts to conceal, or assists another person in concealing or attempting  
50 to conceal, the sex offender; or

51 (4) Provides information to the law-enforcement agency regarding the sex offender which  
52 the person knows to be false information is guilty of a class 1 misdemeanor: ~~and, upon conviction~~  
53 ~~thereof, shall be fined not less than \$250 nor more than \$10,000 or confined in jail not more than~~  
54 ~~one year, or both: Provided, That where the person assists or seeks to assist a sex offender~~  
55 whose violation of this section would constitute a felony, the person shall be guilty of a class 6  
56 felony. ~~and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less~~

57 ~~than one year nor more than five years~~

**CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

**ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.**

**§30-29-9a. Railroad employees conservators of the peace; special railroad policemen; powers and duties.**

1       The conductor of every passenger car and flag person and brake person employed on  
2 such car, as well as the conductor of every train of railroad or traction cars, shall have all the  
3 powers of a conservator of the peace while in charge of such car or train.

4       Any railroad company owning, or leasing and operating, or using any railroad or traction  
5 line or system lying wholly or partially within this state, whether such railroad be operated by  
6 steam or electric power, may apply to the Governor to appoint such citizen or citizens of this state  
7 as such railroad company may designate, to act as special police officers for such railroad or  
8 traction company, with the consent of such citizen or citizens; and the Governor may, upon such  
9 application, appoint and commission such person or persons, or so many of them as he or she  
10 may deem proper, as such special police officers. Every police officer so appointed shall appear  
11 before some person authorized to administer oaths and take and subscribe the oath prescribed  
12 in the fifth section of the fourth article of the Constitution, and shall file such oath with the clerk of  
13 the county commission, or other tribunal in lieu thereof, of the county in which he or she shall  
14 reside. He or she or she shall also file certified copies of such oath in the office of the Secretary  
15 of State, and in the office of the clerk of the county commission, or other tribunal established in  
16 lieu thereof, of each county through which such railroad or any portion thereof may extend. Every  
17 police officer appointed under the provisions of this section shall be a conservator of the peace  
18 within each county in which any part of such railroad may be situated, and in which such oath or  
19 a certified copy thereof shall have been filed with the clerk of the county commission or other  
20 tribunal established in lieu thereof; and, in addition thereto, he or she shall possess and may

21 exercise all the powers and authority, and shall be entitled to all the rights, privileges and  
22 immunities within such counties, as are now or hereafter may be vested in or conferred upon a  
23 deputy sheriff of such county. Any appointment made by the Governor under the provisions of  
24 this section may be revoked by him or her for good cause shown, and such police officers may  
25 be removed from office for official misconduct, incompetence, habitual drunkenness, neglect of  
26 duty or gross immorality, in the same manner in which regularly elected or appointed county  
27 officers may be removed from office. Whenever any such railroad company shall desire to  
28 dispense with the services of any police officer, it may file a notice to that effect, under its  
29 corporate seal, attested by its secretary, in each of the several offices in which such oath or  
30 certified copy thereof shall have been filed; and, thereupon, the powers of the police officer shall  
31 cease and determine. Police officers may wear such uniform and badge of authority, or either, as  
32 the railroad company, upon whose application they were appointed, may designate, and such  
33 railroad company shall pay them for all services rendered pursuant to his or her appointment.

## **CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.**

### **ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.**

#### **§55-2-23. Shooting range; limitations on nuisance actions; noise ordinances.**

1 (a) As used in this section:

2 (1) "Person" means an individual, proprietorship, partnership, corporation, club or other  
3 legal entity; and

4 (2) "Shooting range" means an area, whether indoor or outdoor, designed and operated  
5 for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder or any other similar  
6 shooting.

7 (b) Except as provided in this section, a person may not maintain a nuisance action for  
8 noise against a shooting range located in the vicinity of that person's property if the shooting range  
9 was established as of the date of the person acquiring the property. If there is a substantial change

10 in use of the shooting range or there is a period of shooting inactivity at a shooting range for a  
11 period exceeding one year after the person acquires the property, then the person may maintain  
12 a nuisance action if the action is brought within two years from the beginning of the substantial  
13 change in use of the shooting range, or the resumption of shooting activity: *Provided*, That if a  
14 municipal or county ordinance regulating noise exists, subsection (e) of this section controls.

15 (c) A person who owned property in the vicinity of a shooting range that was established  
16 after the person acquired the property may maintain a nuisance action for noise against that  
17 shooting range only if the action is brought within two years after the establishment of the shooting  
18 range or two years after a substantial change in use of the shooting range or from the time  
19 shooting activity is resumed: *Provided*, That if a municipal or county ordinance regulating noise  
20 exists, subsection (e) of this section controls.

21 (d) Actions authorized by the provisions of this section are not applicable to any indoor  
22 shooting range, the owner or operator of which holds all necessary and required licenses and the  
23 shooting range being in compliance with all applicable state, county and municipal laws, rules or  
24 ordinances regulating the design and operation of such facilities.

25 (e) (1) No municipal or county ordinance regulating noise may subject a shooting range to  
26 noise control standards more stringent than those standards in effect at the time construction or  
27 operation of the shooting range began, whichever occurred earlier in time. The operation or use  
28 of a shooting range may not be enjoined based on noise, nor may any person be subject to an  
29 action for nuisance or criminal prosecution in any matter relating to noise resulting from the  
30 operation of a shooting range, if the shooting range is operating in compliance with all ordinances  
31 relating to noise in effect at the time the construction or operation of the shooting range began,  
32 whichever occurred earlier in time.

33 (2) No shooting range operating or approved for operation within this state which has been  
34 condemned through an eminent domain proceeding, and which relocates to another site within  
35 the same political subdivision within two years of the final condemnation order, may be subject to

36 any noise control standard more stringent than that in effect at the time construction or operation  
 37 of the shooting range which was condemned began, whichever occurred earlier in time.

38 (f) It is the intent of the Legislature in enacting this section during the 2021 regular session  
 39 of the Legislature that the section be applied retroactively.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENT

### ARTICLE 1. CRIMES AGAINST THE GOVERNMENT.

#### §61-1-1. Treason defined; degree of proof; penalty.

1 Treason against the state shall consist only in levying war against it, or in adhering to its  
 2 enemies, giving them aid and comfort. No person shall may be convicted of treason unless on  
 3 the testimony of two witnesses to the same overt act, or on confession in open court. Treason  
 4 against the state constitutes a Class I felony, or, at the discretion of the jury, or the discretion of  
 5 the court when there is a plea of guilty, a Class V felony.

#### §61-1-2. Punishment. Failure to give information of treason; penalty.

1 ~~Whoever is guilty of treason against the state shall be punished by confinement in the~~  
 2 ~~penitentiary for life, or, at the discretion of the jury, or the discretion of the court when there is a~~  
 3 ~~plea of guilty, by confinement in the penitentiary for not less than three nor more than ten years~~

1 If any person has any knowledge of treason against the state, and shall not, as soon as  
 2 may be, give information thereof to the Governor or some conservator of the peace, he or she  
 3 shall be guilty of a Class VI felony.

#### §61-1-3. Failure to give information of treason; penalty. Desecration of flag; penalty.

1 ~~If any person have any knowledge of treason against the state, and shall not, as soon as~~  
 2 ~~may be, give information thereof to the Governor or some conservator of the peace, he or she~~  
 3 ~~shall be guilty of a felony, and, upon conviction, shall be fined not exceeding \$1,000, or by~~  
 4 ~~confinement in the penitentiary not less than one nor more than five years.~~

5 Any person who for exhibition or display shall place, or cause to be placed, any words,

6 figures, marks, pictures, designs, drawings, or any advertisement of any nature, upon any flag,  
7 standard, color or ensign of the United States, or upon the state flag of this state, or shall expose  
8 or cause to be exposed to public view any such flag, standard, color or ensign, upon which shall  
9 have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed  
10 or annexed, any words, figures, marks, pictures, designs, drawings, or any advertisement of any  
11 nature or kind, or who shall expose to public view, manufacture, sell, expose for sale, give away,  
12 or have in possession for sale or to give away, or for use for any purpose, any article or substance,  
13 being an article of merchandise or a receptacle of merchandise, or article or thing for carrying or  
14 transporting merchandise, upon which shall have been printed, painted, attached or otherwise  
15 placed, a representation of any such flag, standard, color or ensign, to advertise, call attention to,  
16 decorate, mark or distinguish the article or substance on which so placed, or who shall publicly  
17 mutilate, deface, defile or defy, trample upon or cast contempt, either by words or acts, upon any  
18 such flag, standard, color or ensign, ~~he or she shall be deemed~~ is guilty of a misdemeanor petty  
19 offense, and, upon conviction, shall be fined not less than \$5 nor more than \$100, and may, be  
20 confined in jail for a period not exceeding 30 days. Any justice of the peace of the county wherein  
21 the offense was committed shall have concurrent jurisdiction of such offense with the circuit or  
22 other courts of such county. The words "flag, standard, color or ensign of the United States," as  
23 used in this section, shall be construed to include any flag, standard, color, ensign, or any  
24 representation or picture of a flag, standard, color or ensign, made of or upon any substance  
25 whatever, and of any size whatever, showing the national colors, the stars and stripes. This  
26 section may not apply to any act permitted by the statutes of the United States, or of this state, or  
27 by the regulations of the United States army and navy, or of the National Guard of this state, or  
28 of the members of the department of public safety; nor shall this section be construed to apply to  
29 the regular issue of a newspaper or other periodical, or to any book, certificate, diploma, warrant  
30 or commission, on which shall be printed said flag, disconnected from any advertisement, or to  
31 the vignette of any political ballot.

**§61-1-4. Attempt to justify or uphold invasion or insurrection; penalty.**

1 [Repealed.]

**§61-1-5. Unlawful speeches, publications, and communications.**

1 [Repealed.]

**§61-1-7. Penalty for unlawful speeches, publications, and communications.**

1 [Repealed.]

**§61-1-8. Desecration of flag; penalty.**

1 [Repealed.]

**§61-1-9. Impersonation of law-enforcement officer or official; penalty.**

1 [Repealed.]

**ARTICLE 2. CRIMES AGAINST THE PERSON.**

**§61-2-1. First and second degree murder defined; punishment; allegations in indictment for homicide.**

1 Murder by poison, lying in wait, imprisonment, starving, or by any willful, deliberate and  
2 premeditated killing, or in the commission of, or attempt to commit, arson, kidnapping, sexual  
3 assault, robbery, burglary, breaking and entering, escape from lawful custody, or a felony offense  
4 of manufacturing or delivering a controlled substance as defined in article four, chapter sixty-a of  
5 this code, is murder of the first degree. Murder of the first degree is a Class I felony.

6 All other murder is murder of the second degree. Murder of the second degree is a Class  
7 II felony. A person imprisoned pursuant to the provisions of this section is not eligible for parole  
8 prior to having served a minimum of 10 years of his or her sentence or the minimum period  
9 required by §62-12-13 of this code, whichever is greater.

10 In an indictment for murder and manslaughter, it ~~shall not be~~ is not necessary to set forth  
11 the manner in which, or the means by which, the death of the deceased was caused, but it shall  
12 be sufficient in every such indictment to charge that the defendant did feloniously, willfully,  
13 maliciously, deliberately, and unlawfully slay, kill, and murder the deceased.

**§61-2-2. ~~Penalty for murder of first degree.~~ Voluntary manslaughter; penalty.**

1 Murder of the first degree shall be punished by confinement in the penitentiary for life  
2 Voluntary manslaughter shall be a Class IV felony. A person imprisoned pursuant to the  
3 provisions of this section is not eligible for parole prior to having served a minimum of three years  
4 of his or her sentence or the minimum period required by §62-12-13 of this code, whichever is  
5 greater.

**§61-2-3. ~~Penalty for murder of second degree.~~ Involuntary manslaughter; penalty.**

1 Murder of the second degree shall be punished by a definite term of imprisonment in the  
2 penitentiary which is not less than ten nor more than forty years. A person imprisoned pursuant  
3 to the provisions of this section is not eligible for parole prior to having served a minimum of ten  
4 years of his or her sentence or the minimum period required by the provisions of section thirteen,  
5 article twelve, chapter sixty-two, whichever is greater Involuntary manslaughter is a Class I  
6 misdemeanor.

**§61-2-4. ~~Voluntary manslaughter; penalty.~~ Concealment of deceased human body; penalty.**

1 ~~Voluntary manslaughter shall be punished by a definite term of imprisonment in the~~  
2 ~~penitentiary which is not less than three nor more than fifteen years. A person imprisoned~~  
3 ~~pursuant to the provisions of this section is not eligible for parole prior to having served a minimum~~  
4 ~~of three years of his or her sentence or the minimum period required by the provisions of section~~  
5 ~~thirteen, article twelve, chapter sixty-two, whichever is greater.~~

6 (a) Any person who, by any means, knowingly and willfully conceals, attempts to conceal  
7 or who otherwise aids and abets any person to conceal a deceased human body where death  
8 occurred as a result of criminal activity is guilty of a Class VI felony.

9 (b) It is a complete defense in a prosecution pursuant to subsection (a) of this section that  
10 the defendant affirmatively brought to the attention of law enforcement, within 48 hours of  
11 concealing the body and prior to being contacted regarding the death by law enforcement, the  
12 existence and location of the concealed deceased human body.

**§61-2-5. Involuntary manslaughter; penalty. Homicide punishable within state if injury occurs within and death without, or vice versa.**

1        ~~Involuntary manslaughter is a misdemeanor and, any person convicted thereof shall be~~  
2        ~~confined in jail not to exceed one year, or fined not to exceed \$1,000, or both, in the discretion of~~  
3        ~~the court.~~

4        If any person is stricken, wounded or poisoned in, and die by reason thereof out of, this  
5        state, the offender is as guilty, and be prosecuted and punished, as if the death had occurred in  
6        the county in which the stroke, wound or poison was given or administered. And if any person is  
7        stricken, wounded or poisoned out of this state, and die by reason thereof within this state, the  
8        offender is as guilty, and may be prosecuted and punished, as if the mortal stroke or wound had  
9        been given, or poison administered, in the county in which the person so stricken, wounded or  
10       poisoned may die.

**§61-2-5a Concealment of deceased human body; penalty.**

1        [Repealed.]

**~~§61-2-6 Homicide punishable within state if injury occurs within and death without, or vice versa. Attempt to kill or injure by poison; penalty.~~**

1        ~~If any person be stricken, wounded or poisoned in, and die by reason thereof out of, this~~  
2        ~~state, the offender shall be as guilty, and be prosecuted and punished, as if the death had~~  
3        ~~occurred in the county in which the stroke, wound or poison was given or administered. And if any~~  
4        ~~person be stricken, wounded, or poisoned out of this state, and die by reason thereof within this~~  
5        ~~state, the offender shall be as guilty, and may be prosecuted and punished, as if the mortal stroke~~  
6        ~~or wound had been given, or poison administered, in the county in which the person so stricken,~~  
7        ~~wounded or poisoned may so die. Any person, who administers, or attempts to administer, any~~  
8        ~~poison or other destructive thing in food, drink, medicine or otherwise, or poisons any spring, well,~~  
9        ~~reservoir, conduit or pipe of water, with intent to kill or injure another person, is guilty of a Class~~  
10       ~~IV felony.~~

**§61-2-7. ~~Attempt to kill or injure by poison; penalty.~~ Abortion; penalty.**

1           ~~If any person administer, or attempt to administer, any poison or other destructive thing in~~  
2 ~~food, drink, medicine or otherwise, or poison any spring, well, reservoir, conduit or pipe of water,~~  
3 ~~with intent to kill or injure another person, he or she shall be guilty of a felony and, upon conviction,~~  
4 ~~shall be confined in the penitentiary not less than three nor more than eighteen years.~~

5           Any person, who administers to, or causes to be taken by, a woman, any drug or other  
6 thing, or uses any means, with intent to destroy her unborn child, or to produce abortion or  
7 miscarriage, and thereby destroys such child, or produces such abortion or miscarriage, is guilty  
8 of a Class IV felony and if the woman dies by reason of the abortion performed upon her, that  
9 person is guilty of murder. No person, by reason of any act mentioned in this section, may be  
10 punishable where such act is done in good faith, with the intention of saving the life of the woman  
11 or child.

**§61-2-8. ~~Abortion; penalty.~~ Assault and battery; penalty.**

1           ~~Any person who shall administer to, or cause to be taken by, a woman, any drug or other~~  
2 ~~thing, or use any means, with intent to destroy her unborn child, or to produce abortion or~~  
3 ~~miscarriage, and shall thereby destroy such child, or produce such abortion or miscarriage, shall~~  
4 ~~be guilty of a felony and, upon conviction, shall be confined in the penitentiary not less than three~~  
5 ~~nor more than ten years; and if such woman die by reason of such abortion performed upon her,~~  
6 ~~such person shall be guilty of murder. No person, by reason of any act mentioned in this section,~~  
7 ~~shall be punishable where such act is done in good faith, with the intention of saving the life of~~  
8 ~~such woman or child.~~

9           (a) If any person maliciously shoots, stabs, cuts or wounds any person, or by any means  
10 cause him or her bodily injury with intent to maim, disfigure, disable or kill, he or she, except where  
11 it is otherwise provided, is guilty of a Class V felony.

12           (b) Assault. — Any person who unlawfully attempts to commit a violent injury to the person  
13 of another or unlawfully commits an act that places another in reasonable apprehension of

14 immediately receiving a violent injury is guilty of a Class II misdemeanor.

15 (c) Battery. — Any person who unlawfully and intentionally makes physical contact of an  
16 insulting or provoking nature to the person of another or unlawfully and intentionally causes  
17 physical harm to another person is guilty of a Class I misdemeanor.

18 (d) Any person convicted of a violation of subsection (b) or (c) of this section who has, in  
19 the 10 years prior to the conviction, been convicted of a violation of either subsection (b) or (c) of  
20 this section where the victim was a current or former spouse, current or former sexual or intimate  
21 partner, a person with whom the defendant has a child in common, a person with whom the  
22 defendant cohabits or has cohabited, a parent or guardian or the defendant's child or ward at the  
23 time of the offense or convicted of a violation of §61-2-28 of this code or has served a period of  
24 pretrial diversion for an alleged violation of subsection (b) or (c) of this section or §61-2-28 of this  
25 code when the victim has a present or past relationship, upon conviction, is subject to the  
26 penalties set forth in §61-2-28 of this code for a second, third or subsequent criminal act of  
27 domestic violence offense, as appropriate.

28 (e) (1) For purposes of this section:

29 “Government representative” means any officer or employee of the state or a political  
30 subdivision thereof, or a person under contract with a state agency or political subdivision thereof.

31 “School employee” means a person employed by a county board of education whether  
32 employed on a regular full-time basis, an hourly basis or otherwise.

33 “Health care worker” means any nurse, nurse practitioner, physician, physician assistant  
34 or technician practicing at, and all persons employed by or under contract to a hospital, county or  
35 district health department, long-term care facility, physician's office, clinic, or outpatient treatment  
36 facility.

37 “Emergency service personnel” means any paid or volunteer firefighter, emergency  
38 medical technician, paramedic, or other emergency services personnel employed by or under  
39 contract with an emergency medical service provider or a state agency or political subdivision

40 thereof.

41 “Utility worker” means any individual employed by a public utility or electric cooperative or  
42 under contract to a public utility, electric cooperative or interstate pipeline.

43 “Law-enforcement officer” has the same definition as this term is defined in §30-29-1 of  
44 this code, except for purposes of this section, “law-enforcement officer” shall additionally include  
45 those individuals defined as “chief executive” in §30-29-1 of this code.

46 “Correctional employee” means any individual employed by the West Virginia Division of  
47 Corrections, the West Virginia Regional Jail Authority, and the West Virginia Division of Juvenile  
48 Services and an employee of an entity providing services to incarcerated, detained or housed  
49 persons pursuant to a contract with such agencies.

50 “Athletic official” means a person at a sports event who enforces the rules of that event,  
51 such as an umpire or referee, or a person who supervises the participants, such as a coach.

52 “Transport personnel” means any driver, conductor, motorman, pilot, captain, ferryman, or  
53 other person in charge of any vehicle, including automobiles, cars, trucks, buses, aircraft, and any  
54 boat, driven by steam, electricity, gasoline, or any other motive power, and which is being used  
55 for public conveyance, including but not limited to taxicabs, cars for hire, or ride sharing services.

56 (2) The Court shall consider as an aggravated factor any violation of subsection (a), (b),  
57 or (c) of this section committed against a government representative, school employee, health  
58 care worker, any emergency services personnel, utility worker, law enforcement officer, athletic  
59 official, or transport personnel while acting in their official capacity or on account of their office.  
60 All penalties enjoined by this section may be enhanced by one level.

61 (f) Any person convicted of any crime set forth in this section who is incarcerated in a  
62 facility operated by the West Virginia Division of Corrections or the West Virginia Regional Jail  
63 Authority, or is in the custody of the Division of Juvenile Services and is at least 18 years of age  
64 or subject to prosecution as an adult, at the time of committing the offense and whose victim is a  
65 correctional employee may not be sentenced in a manner by which the sentence would run

66 concurrent with any other sentence being served at the time the offense giving rise to the  
67 conviction of a crime set forth in this section was committed.

**61-2-9 ~~Malicious or unlawful assault; assault; battery; penalties.~~ Assault during  
commission of or attempt to commit a felony; penalty.**

1 ~~(a) If any person maliciously shoots, stabs, cuts or wounds any person, or by any means~~  
2 ~~cause him or her bodily injury with intent to maim, disfigure, disable or kill, he or she, except where~~  
3 ~~it is otherwise provided, is guilty of a felony and, upon conviction thereof, shall be punished by~~  
4 ~~confinement in a state correctional facility not less than two nor more than ten years. If the act is~~  
5 ~~done unlawfully, but not maliciously, with the intent aforesaid, the offender is guilty of a felony~~  
6 ~~and, upon conviction thereof, shall either be imprisoned in a state correctional facility not less than~~  
7 ~~one nor more than five years, or be confined in jail not exceeding twelve months and fined not~~  
8 ~~exceeding \$500.~~

9 ~~(b) Assault. — Any person who unlawfully attempts to commit a violent injury to the person~~  
10 ~~of another or unlawfully commits an act that places another in reasonable apprehension of~~  
11 ~~immediately receiving a violent injury is guilty of a misdemeanor and, upon conviction thereof,~~  
12 ~~shall be confined in jail for not more than six months or fined not more than \$100, or both fined~~  
13 ~~and confined.~~

14 ~~(c) Battery. — Any person who unlawfully and intentionally makes physical contact of an~~  
15 ~~insulting or provoking nature to the person of another or unlawfully and intentionally causes~~  
16 ~~physical harm to another person is guilty of a misdemeanor and, upon conviction thereof, shall be~~  
17 ~~confined in jail for not more than twelve months or fined not more than \$500, or both fined and~~  
18 ~~confined.~~

19 ~~(d) Any person convicted of a violation of subsection (b) or (c) of this section who has, in~~  
20 ~~the ten years prior to the conviction, been convicted of a violation of either subsection (b) or (c) of~~  
21 ~~this section where the victim was a current or former spouse, current or former sexual or intimate~~  
22 ~~partner, a person with whom the defendant has a child in common, a person with whom the~~

23 ~~defendant cohabits or has cohabited, a parent or guardian or the defendant's child or ward at the~~  
 24 ~~time of the offense or convicted of a violation of section twenty-eight of this article or has served~~  
 25 ~~a period of pretrial diversion for an alleged violation of subsection (b) or (c) of this section or~~  
 26 ~~section twenty-eight of this article when the victim has a present or past relationship, upon~~  
 27 ~~conviction, is subject to the penalties set forth in section twenty-eight of this article for a second,~~  
 28 ~~third or subsequent criminal act of domestic violence offense, as appropriate. If any person in the~~  
 29 ~~commission of, or attempt to commit a felony, unlawfully shoot, stab, cut or wound another person,~~  
 30 ~~he or she shall be guilty of a Class V felony.~~

**§61-2-9a. Stalking; harassment; penalties; definitions.**

1 [Repealed.]

**§61-2-9b. Penalties for malicious or unlawful assault or assault of a child near a school.**

1 [Repealed.]

**§61-2-9c. Wanton endangerment involving the use of fire; penalty.**

1 [Repealed.]

**§61-2-9d. Strangulation; definitions; penalties.**

1 [Repealed.]

**§61-2-10. Assault during commission of or attempt to commit a felony; penalty.**

1 [Repealed]

**~~§61-2-10a.~~ Violent crimes against the elderly; sentence not subject to suspension or probation.**

1 (a) ~~If any~~ Any person be who is convicted and sentenced for an offense defined under ~~the~~  
 2 ~~provisions of section nine or ten §61-2-8 or §61-2-9 of this code,~~ and if the person shall have has  
 3 committed such offense against a person who is 65. years of age or older, then the sentence shall  
 4 be mandatory and ~~shall~~ may not be subject to suspension or probation: *Provided,* That the court  
 5 ~~may, in its discretion,~~ suspend the sentence and order probation to any person so convicted upon  
 6 condition that such person perform public service for a period of time deemed appropriate by the

7 court: *Provided, however,* That the public service may not be rendered in or about facilities or  
 8 programs providing care or services for the elderly: *Provided further,* That the court may apply  
 9 the provisions of §62-11A-1 *et seq.* . of this code to a person committed to a term of one year or  
 10 less.

11 (b) The existence of any fact which would make any person ineligible for probation under  
 12 subsection (a) of this section because of the commission or attempted commission of a felony  
 13 against a victim 65. years of age or older shall may not be applicable unless such fact is: (i) Found  
 14 by the court upon a plea of guilty or nolo contendere; or (ii) found by the jury, if the matter is tried  
 15 before a jury; or (iii) found by the court, if the matter is tried by the court, without a jury.

**§61-2-10b. Malicious assault; unlawful assault; battery; and assault on governmental  
 representatives, health care providers, utility workers, law-enforcement officers,  
 correctional employees, and emergency medical service personnel; definitions;  
 penalties.**

[Repealed.]

**~~§61-2-11. Unlawful shooting at another in street, alley or public resort; penalty.~~**  
**Harassment; penalties; definitions**

1 ~~If any person unlawfully shoot at another person in any street or alley in a city, town or~~  
 2 ~~village, or in any place of public resort, he or she shall be guilty of a misdemeanor, and, upon~~  
 3 ~~conviction, shall be confined in jail not less than six months nor more than three years, and be~~  
 4 ~~finned not less than \$100 nor more than \$1,000. (a) Any person who engages in a course of~~  
 5 ~~conduct directed at another person with the intent to cause the other person to fear for his or her~~  
 6 ~~personal safety, the safety of others, or suffer substantial emotional distress, or causes a third~~  
 7 ~~person to so act, is guilty of a Class II misdemeanor.~~

8 ~~(b) Any person who harasses or repeatedly makes credible threats against another is~~  
 9 ~~guilty of a Class II misdemeanor.~~

10 ~~(c) Notwithstanding any provision of this code to the contrary, any person who violates the~~

11 provisions of subsection (a) or (b) of this section in violation of an order entered by a circuit court,  
12 magistrate court, or family court judge, in effect and entered pursuant to §48-5-501, §48-5-601,  
13 or §48-27-403 of this code, is guilty of a Class I misdemeanor.

14 (d) A second or subsequent conviction for a violation of subsection (a) or (b) of this section  
15 is a Class VI felony.

16 (e) Notwithstanding any provision of this code to the contrary, any person against whom  
17 a protective order is in effect for injunctive relief pursuant to the provisions of §48-5-608 or §48-  
18 27-501 of this code, who has been served with a copy of said order, who commits a violation of  
19 the provisions of this section, in which the subject in the protective order is the victim, shall be  
20 guilty of a Class VI felony.

21 (f) Notwithstanding any provision of this code to the contrary, any person against whom a  
22 protective order is in effect pursuant to the provisions of §53-8-7 of this code, who has been  
23 previously served with a copy of the order, who commits a violation of the provisions of this  
24 section, in which the subject in the protective order is the victim, is guilty of a Class VI felony.

25 (g) Notwithstanding any provision of this code to the contrary, any person who harasses  
26 another person with the intent to cause the person to physically injure himself or herself, or to  
27 take his or her own life, or who continues to harass another, knowing or having reason to know  
28 that the person is likely to physically injure himself or herself, or to take his or her own life based,  
29 in whole or in part, on such harassment, is guilty of a Class V felony.

30 (h) For the purposes of this section:

31 “Bodily injury” means substantial physical pain, illness, or any impairment of physical  
32 condition;

33 “Course of conduct” means a pattern of conduct composed of two or more acts in which  
34 a defendant directly, indirectly, or through a third party by any action, method, device, or means:

35 (A) Follows, monitors, observes, surveils, or threatens a specific person or persons;

36 (B) Engages in other nonconsensual contact and/or communications, including contact

37 through electronic communication, with a specific person or persons; or

38 (C) Interferes with or damages a person's property or pet;

39 "Credible threat" means a threat of bodily injury made with the apparent ability to carry out  
40 the threat and with the result that a reasonable person would believe that the threat could be  
41 carried out;

42 "Harasses" means a willful course of conduct directed at a specific person or persons  
43 which would cause a reasonable person mental injury or emotional distress, and which serves no  
44 legitimate or lawful purpose;

45 "Immediate family" means a spouse, parent, stepparent, mother-in-law, father-in-law,  
46 child, stepchild, sibling, or any person who regularly resides in the household or within the prior  
47 six months regularly resided in the household; and

48 "Repeatedly" means on two or more occasions.

49 (i) Any person convicted under the provisions of this section who is granted probation or  
50 for whom execution or imposition of a sentence or incarceration is suspended, shall have as a  
51 condition of probation or suspension of sentence that he or she participate in counseling or  
52 medical treatment as directed by the court.

53 (j) Upon conviction, the court may issue an order restraining the defendant from any  
54 contact with the victim for a period not to exceed 10 years. The length of any restraining order  
55 shall be based upon the seriousness of the violation before the court, the probability of future  
56 violations, and the safety of the victim or his or her immediate family. The duration of the  
57 restraining order may be longer than five years only in cases when a longer duration is necessary  
58 to protect the safety of the victim or his or her immediate family.

59 (k) It is a condition of bond for any person accused of the offense described in this section  
60 that the person is to have no contact, direct or indirect, verbal, or physical, with the alleged victim.

61 (l) Nothing in this section may be construed to preclude a sentencing court from exercising  
62 its power to impose home confinement with electronic monitoring as an alternative sentence.

63 (m) The Governor's Committee on Crime, Delinquency, and Correction, after consultation  
64 with representatives of labor, licensed domestic violence programs, and rape crisis centers which  
65 meet the standards of the West Virginia Foundation for Rape Information and Services, may  
66 promulgate legislative rules and emergency rules pursuant to §29A-3-1 et seq. of this code,  
67 establishing appropriate standards for the enforcement of this section by state, county, and  
68 municipal law-enforcement officers and agencies.

**§61-2-12. Robbery or attempted robbery; penalties. Strangulation; suffocation and**  
**asphyxiation; definitions; penalties.**

1 ~~(a) Any person who commits or attempts to commit robbery by: (1) Committing violence~~  
2 ~~to the person, including, but not limited to, partial strangulation or suffocation or by striking or~~  
3 ~~beating; or (2) uses the threat of deadly force by the presenting of a firearm or other deadly~~  
4 ~~weapon, is guilty of robbery in the first degree and, upon conviction thereof, shall be imprisoned~~  
5 ~~in a state correctional facility not less than ten years.~~

6 ~~(b) Any person who commits or attempts to commit robbery by placing the victim in fear~~  
7 ~~of bodily injury by means other than those set forth in subsection (a) of this section or any person~~  
8 ~~who commits or attempts to commit robbery by the use of any means designed to temporarily~~  
9 ~~disable the victim, including, but not limited to, the use of a disabling chemical substance or an~~  
10 ~~electronic shock device, is guilty of robbery in the second degree and, upon conviction thereof,~~  
11 ~~shall be confined in a correctional facility for not less than five years nor more than eighteen years.~~

12 ~~(c) If any person: (1) By force and violence, or by putting in fear, feloniously takes, or~~  
13 ~~feloniously attempts to take, from the person or presence of another any property or money or~~  
14 ~~any other thing of value belonging to, or in the care, custody, control, management or possession~~  
15 ~~of, any bank, he or she shall be guilty of a felony and, upon conviction, shall be confined in the~~  
16 ~~penitentiary not less than ten nor more than twenty years; and (2) if any person in committing, or~~  
17 ~~in attempting to commit, any offense defined in the preceding clause (1) of this subsection,~~  
18 ~~assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon~~

19 ~~or device, disabling chemical substance or an electronic shock device, he or she shall be guilty~~  
 20 ~~of a felony and, upon conviction, shall be confined in the penitentiary not less than ten years nor~~  
 21 ~~more than twenty-five years.~~

22 (a) As used in this section:

23 “Bodily injury” means substantial physical pain, illness or any impairment of physical  
 24 condition;

25 “Strangle” means knowingly and willfully restricting another person’s air intake or blood  
 26 flow by the application of pressure on the neck or throat;

27 “Suffocate” means knowingly and willfully restricting the normal breathing or circulation of  
 28 blood by blocking the nose or mouth of another; and

29 “Asphyxiate” means knowingly and willfully restricting the normal breathing or circulation  
 30 of blood by the application of pressure on the chest or torso.

31 (b) Any person who strangles, suffocates, or asphyxiates another without that person’s  
 32 consent and thereby causes the other person bodily injury or loss of consciousness is guilty of a  
 33 Class VI felony.

**§61-2-13. Extortion or attempted extortion by threats; penalties. Robbery or attempted robbery; penalties.**

1 ~~(a) A person who threatens injury to the character, person, or property of another person,~~  
 2 ~~or to the character, person, or property of his or her spouse or child, or accuses him or her or~~  
 3 ~~them of a criminal offense, and thereby obtains anything of value, or other consideration, he or~~  
 4 ~~she is guilty of a felony and, upon conviction, shall be confined in a correctional facility not less~~  
 5 ~~than one nor more than five years. A person who makes such threat of injury or accusation of an~~  
 6 ~~offense as set forth in this section, but fails to obtain anything of value or other consideration, is~~  
 7 ~~guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than two nor more~~  
 8 ~~than 12 months and fined not less than \$50 nor more than \$500.~~

9 ~~(b) For purposes of this article, “consideration” includes sexual acts as defined in §61-8B-~~

10 ~~1 of this code, and images of intimate parts defined in §61-8-28a of this code.~~

11 (a) Any person who commits or attempts to commit robbery by:(1) Committing violence to  
 12 the person, including, but not limited to, partial strangulation or suffocation or by striking or beating  
 13 or (2) using the threat of deadly force by the presenting of a firearm or other deadly weapon, is  
 14 guilty of robbery in the first degree, a Class II felony.

15 (b) Any person who commits or attempts to commit robbery by placing the victim in fear  
 16 of bodily injury by means other than those set forth in subdivisions (1) and (2) of this subsection  
 17 or any person who commits or attempts to commit robbery by the use of any means designed to  
 18 temporarily disable the victim, including, but not limited to, the use of a disabling chemical  
 19 substance or an electronic shock device, is guilty of robbery, a Class II felony.

20 (c) Any person who: (1) By force and violence, or by putting in fear, feloniously takes, or  
 21 feloniously attempts to take, from the person or presence of another any property or money or  
 22 any other thing of value belonging to, or in the care, custody, control, management or possession  
 23 of, any bank, is guilty of a Class III felony and (2) Any person who, in committing, or in attempting  
 24 to commit, any offense defined in subdivision (1) of this subsection, assaults any person, or puts  
 25 in jeopardy the life of any person by the use of a dangerous weapon or device, disabling chemical  
 26 substance or an electronic shock device, is also be guilty of a Class III felony.

**§61-2-14. Abduction of person; kidnapping or concealing child; penalties. Extortion or attempted extortion by threats; penalties.**

1 ~~(a) Any person who takes away another person, or detains another person against such~~  
 2 ~~person's will, with intent to marry or defile the person, or to cause the person to be married or~~  
 3 ~~defiled by another person; or takes away a child under the age of sixteen years from any person~~  
 4 ~~having lawful charge of such child, for the purpose of prostitution or concubinage, shall be guilty~~  
 5 ~~of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than three~~  
 6 ~~nor more than ten years.~~

7 ~~(b) Any person, other than the father or mother, who illegally, or for any unlawful, improper~~

8 ~~or immoral purpose other than the purposes stated in subsection (a) of this section or section~~  
 9 ~~fourteen-a or fourteen-c of this article, seizes, take or secretes a child under sixteen years of age,~~  
 10 ~~from the person or persons having lawful charge of such child, shall be guilty of a felony, and,~~  
 11 ~~upon conviction thereof, shall be confined in the penitentiary not less than one nor more than ten~~  
 12 ~~years.~~

13 (a) A person who threatens injury to the character, person, or property of another person,  
 14 or to the character, person, or property of his or her spouse or child, or accuses him or her or  
 15 them of a criminal offense, and thereby obtains anything of value, or other consideration, he or  
 16 she is guilty of a Class VI felony. A person who makes such threat of injury or accusation of an  
 17 offense as set forth in this section but fails to obtain anything of value or other consideration, is  
 18 guilty of a Class VI felony.

19 (b) For purposes of this article, "consideration" includes sexual acts as defined in §61-8B-  
 20 1 of this code, and images of intimate parts defined in §61-8-28a of this code.

**§61-2-14a. Kidnapping; penalty**

1 [Repealed.]

**§61-2-14b. Venue of offenses under §§61-2-14 and 61-2-14a.**

1 [Repealed.]

**§61-2-14c. Penalty for threats to kidnap or demand ransom.**

1 [Repealed.]

**§61-2-14d. Concealment or removal of minor child from custodian or from person entitled  
to visitation; penalties; defenses.**

1 [Repealed.]

**§61-2-14e. One aiding or abetting in offense under §61-2-14, §61-2-14a, §61-2-14c or §61-2-  
14d guilty as principal; venue.**

1 [Repealed.]

**§61-2-14f. Penalties for abduction of a child near a school.**

1 [Repealed.]

**§61-2-14g. Unlawful restraint; penalties.**

1 [Repealed.]

**§61-2-14h. Prohibition of purchase or sale of child; penalty; definitions; exceptions.**

1 [Repealed.]

**§61-2-15. ~~Assault, battery on school employees; penalties.~~ Kidnapping; penalty.**

1 ~~(a) If any person commits an assault: (1) By unlawfully attempting to commit a violent~~  
2 ~~injury to the person of a school employee while he or she is engaged in the performance of his or~~  
3 ~~her duties, is commuting to or from his or her place of employment or if the motive for the assault~~  
4 ~~is retaliation for some action taken by the employee to supervise or discipline one or more pupils~~  
5 ~~pursuant to sections one or one-a, article five, chapter eighteen-a of this code; or (2) by unlawfully~~  
6 ~~committing an act which places a school employee in reasonable apprehension of immediately~~  
7 ~~receiving a violent injury while the employee is engaged in the performance of his or her duties,~~  
8 ~~is commuting to or from his or her place of employment or if the motive for the assault is retaliation~~  
9 ~~for some action taken by the employee to supervise or discipline one or more pupils pursuant to~~  
10 ~~sections one or one-a, article five, chapter eighteen-a of this code, he or she is guilty of a~~  
11 ~~misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail not less~~  
12 ~~than five days nor more than six months and fined not less than \$50 nor more than \$100.~~

13 ~~(b) If any person commits a battery: (1) By unlawfully and intentionally making physical~~  
14 ~~contact of an insulting or provoking nature with the person of a school employee while he or she~~  
15 ~~is engaged in the performance of his or her duties, is commuting to or from his or her place of~~  
16 ~~employment or if the motive for the battery is retaliation for some action taken by the employee to~~  
17 ~~supervise or discipline one or more pupils pursuant to sections one or one-a, article five, chapter~~  
18 ~~eighteen-a of this code; or (2) by unlawfully and intentionally causing physical harm to a school~~  
19 ~~employee while he or she is engaged in the performance of his or her duties, is commuting to or~~  
20 ~~from his or her place of employment or if the motive for the battery is retaliation for some action~~

21 ~~taken by the employee to supervise or discipline one or more pupils pursuant to sections one or~~  
22 ~~one-a, article five, chapter eighteen-a of this code, he or she is guilty of a misdemeanor and, upon~~  
23 ~~conviction thereof, shall be confined in the county or regional jail not less than ten days nor more~~  
24 ~~than twelve months and fined not less than \$100 nor more than \$500.~~

25 ~~(c) For the purposes of this section, "school employee" means a person employed by a~~  
26 ~~county board of education whether employed on a regular full-time basis, an hourly basis or~~  
27 ~~otherwise. For the purposes of this section, a "school employee" includes a student teacher.~~

28 (a) Any person who unlawfully takes custody of, conceals, confines or restrains another  
29 person against his or her will by means of force, threat of force, duress, fraud, deceit,  
30 inveiglement, misrepresentation or enticement with the intent:

31 (1) To hold another person for ransom, reward, or concession;

32 (2) To transport another person with the intent to inflict bodily injury or to terrorize the  
33 victim or another person; or

34 (3) To use another person as a shield or hostage, is guilty of a Class I felony and, upon  
35 conviction, notwithstanding the provisions of §62-12-1 et seq. of this code, is not eligible for parole.

36 (b) The following exceptions apply to the penalty contained in subsection (a) of this  
37 section:

38 (1) A jury may recommend mercy, and if the recommendation is added to their verdict, the  
39 person is eligible for parole in accordance with the provisions of §62-12-1 et seq of this code;

40 (2) If the person pleads guilty, the court may provide that the person is eligible for parole  
41 in accordance with the provisions of §62-12-1 et seq of this code and, if the court so provides, the  
42 person is eligible for parole in accordance with the provisions of that article in the same manner  
43 and with like effect as if the person had been found guilty by the verdict of a jury and the jury had  
44 recommended mercy;

45 (3) All cases in which the person against whom the offense is committed is returned, or is  
46 permitted to return, alive, without bodily harm having been inflicted upon him, but after ransom,

47 money or other thing, or any concession or advantage of any sort has been paid or yielded,  
48 constitutes a Class II felony; or

49 (4) All cases in which the person against whom the offense is committed is returned, or is  
50 permitted to return, alive, without bodily harm having been inflicted upon him or her, but without  
51 ransom, money or other thing, or any concession or advantage of any sort having been paid or  
52 yielded, constitutes a Class III felony.

53 (c) For purposes of this section, "to use another as a hostage" means to seize or detain  
54 and threaten to kill or injure another in order to compel a third person or a governmental  
55 organization to do, or abstain from doing, any legal act as an explicit or implicit condition for the  
56 release of the person detained.

57 (d) Notwithstanding any other provision of this section, if a violation of this section is  
58 committed by a family member of a minor abducted or held hostage who is not motivated by  
59 monetary purposes, but rather intends to conceal, take, remove the child or refuse to return the  
60 child to his or her lawful guardian in the belief, mistaken or not, that it is in the child's interest to  
61 do so, that person is guilty of a Class VI felony.

62 (e) Notwithstanding any provision of this code to the contrary, where a law-enforcement  
63 agency of this state or a political subdivision thereof receives a complaint that a violation of the  
64 provisions of this section has occurred, the receiving law-enforcement agency shall notify any  
65 other law-enforcement agency with jurisdiction over the offense, including, but not limited to, the  
66 State Police and each agency so notified, shall cooperate in the investigation forthwith.

67 (f) It is a defense to a violation of subsection (d) of this section, that the accused's action  
68 was necessary to preserve the welfare of the minor child and the accused promptly reported his  
69 or her actions to a person with lawful custody of the minor, to law enforcement or to the Child  
70 Protective Services Division of the Department of Health and Human Resources.

71 (g) In the case of every offense committed in violation of the provisions of this section,  
72 regardless of whether the offense originated within or without this state, the venue of the offense

73 shall lie in the county where the person was taken, or induced to go away or otherwise kidnapped,  
 74 in the county where such person was held or detained, or in the county through which such person  
 75 was conducted or transported.

76 (h) Any person who, with intent to extort from any other person any ransom, money or  
 77 other thing, or any concession or advantage of any sort, shall, by speech, writing, printing, drawing  
 78 or any other method or means of communication, directly or indirectly threaten to take away  
 79 forcibly or by stealth or otherwise kidnap any person, or shall directly or indirectly demand, orally  
 80 or in writing, or by any other method or means of communication, any ransom, money or other  
 81 thing, or any concession or advantage of any sort, on a threat to take away forcibly or by stealth  
 82 or otherwise kidnap any person, is guilty of a Class VI felony.

**§61-2-15a. Assault, battery on athletic officials; penalties.**

1 [Repealed.]

**§61-2-16. ~~Injury to passenger by person in charge of public conveyance or boat; penalty.~~**

**Concealment or removal of minor child from custodian or from person entitled to  
 visitation; penalties; defenses.**

1 ~~If any driver, conductor, motorman, captain or other person in charge of any vehicle or~~  
 2 ~~boat, driven by steam, electricity, gasoline or other motive power and used for public conveyance,~~  
 3 ~~shall, in the management of such vehicle or boat, willfully or negligently inflict bodily injury on any~~  
 4 ~~person, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail~~  
 5 ~~not less than two nor more than six months, or be fined not exceeding \$500, or both.~~

6 (a) Any person who conceals, takes, or removes a minor child in violation of any court  
 7 order, and with the intent to deprive another person of lawful custody or visitation rights, is guilty  
 8 of a Class VI felony.

9 (b) It shall be a defense under this section that the accused reasonably believed such  
 10 action was necessary to preserve the welfare of the minor child. The mere failure to return a minor  
 11 child at the expiration of any lawful custody or visitation period without the intent to deprive another

12 person of lawful custody or visitation rights may not constitute an offense under this section.

**§61-2-16a. Malicious assault; unlawful assault; battery and recidivism of battery; assault on a driver, conductor, motorman, captain, pilot or other person in charge of any vehicle used for public conveyance.**

1 [Repealed.]

**§61-2-17. One aiding or abetting in offense under §61-2-15 or §61-2-16 guilty as principal; venue.**

1 Any person who, in any way knowingly aid or abet any other person in the commission of  
2 any offense described in §61-2-15 or §61-2-16 of this code, either as accessory before or an  
3 accessory after the fact, such person so aiding and abetting is guilty as a principal in the  
4 commission of such offense and shall be punished in the same manner and to the same extent  
5 as is provided in said sections for the person who committed the offense. The venue of any  
6 offense committed in violation of the provisions of this section shall be as provided in §61-11-7 of  
7 this code.

**§61-2-18. Unlawful restraint; penalties.**

1 (a) Any person who, without legal authority intentionally restrains another with the intent  
2 that the other person is not allowed to leave the place of restraint and who does so by physical  
3 force or by overt or implied threat of violence or by actual physical restraint but without the intent  
4 to obtain any other concession or advantage as those terms are used in §61-2-14a of this code  
5 is guilty of a Class I misdemeanor.

6 (b) In any prosecution under this section, it is an affirmative defense that:

7 (1) The defendant acted reasonably and in good faith to protect the person from imminent  
8 physical danger; or

9 (2) The person restrained was a child less than 18 years old and that the actor was a  
10 parent or legal guardian, or a person acting under authority granted by a parent or legal guardian  
11 of such child, or by a teacher or other school personnel acting under authority granted by §18A-

12 5-1. of this code, and that his or her sole purpose was to assume control of such child.

13 (c) As used in this section to "restrain" means to restrict a person's movement without his  
14 or her consent.

15 (d) This section may not apply to acts done by a law-enforcement officer in the lawful  
16 exercise of his or her duties.

**§61-2-19. Prohibition of purchase or sale of child; penalty; definitions; exceptions.**

1 (a) Any person or agency who knowingly offers, gives, or agrees to give to another person  
2 money, property, service, or other thing of value in consideration for the recipient's locating,  
3 providing, or procuring a minor child for any purpose which entails a transfer of the legal or  
4 physical custody of the child, including, but not limited to, adoption or placement, is guilty of a  
5 felony and subject to fine and imprisonment as provided in this section.

6 (b) Any person who knowingly receives, accepts, or offers to accept money, property,  
7 service, or other thing of value to locate, provide or procure a minor child for any purpose which  
8 entails a transfer of the legal or physical custody of the child, including, but not limited to, adoption  
9 or placement, is guilty of a felony and subject to fine and imprisonment as provided in this section.

10 (c) Any person who violates the provisions of subsections (a) and (b) of this section is  
11 guilty of a Class VI felony.

12 (d) A child whose parent, guardian, or custodian has sold or attempted to sell said child in  
13 violation of the provisions of §48-22-1 et seq. of this code may be considered an abused child as  
14 defined by §49-1-201 of this code. The court may place such a child in the custody of the  
15 Department of Health and Human Resources or with another responsible person as dictated by  
16 the best interests of the child.

17 (e) This section does not prohibit the payment or receipt of the following:

18 (1) Fees paid for reasonable and customary services provided by the Department of  
19 Health and Human Resources or any licensed or duly authorized adoption or child-placing  
20 agency;

21 (2) Reasonable and customary legal, medical, hospital or other expenses incurred in  
22 connection with the pregnancy, birth, and adoption proceedings;

23 (3) Fees and expenses included in any agreement in which a woman agrees to become  
24 a surrogate mother; or

25 (4) Any fees or charges authorized by law or approved by a court in a proceeding relating  
26 to the placement plan, prospective placement, or placement of a minor child for adoption.

27 (f) At the final hearing on the adoption as provided in §48-22-1 et seq. of this code, an  
28 affidavit of any fees and expenses paid or promised by the adoptive parents shall be submitted  
29 to the court.

**§61-2-20. Failure to remove doors from abandoned refrigerators, freezers and other  
appliances; penalties.**

1 No person may abandon any refrigerator or food freezer appliance or other airtight  
2 appliance having a height or length greater than two feet without first removing all entry doors  
3 therefrom.

4 Any person violating the provisions of this section is guilty of a Class II misdemeanor.  
5 Magistrates shall have jurisdiction of cases arising hereunder concurrent with courts of record.

**§61-2-21. Domestic violence — criminal acts.**

1 (a) Domestic battery. — Any person who unlawfully and intentionally makes physical  
2 contact of an insulting or provoking nature with his or her family or household member, or  
3 unlawfully and intentionally causes physical harm to his or her family or household member, is  
4 guilty of a Class I misdemeanor.

5 (b) Domestic assault. — Any person who unlawfully attempts to commit a violent injury  
6 against his or her family or household member, or unlawfully commits an act that places his or  
7 her family or household member in reasonable apprehension of immediately receiving a violent  
8 injury, is guilty of a Class II misdemeanor.

9 (c) Second offense. — Domestic assault or domestic battery.

10 A person, convicted of a violation of subsection (a) of this section after having been  
11 previously convicted of a violation of subsection (a) or (b) of this section, after having been  
12 convicted of a violation of §61-2-9(b) or §61-2-9(c) of this code or §61-2-14 (a) of this code, where  
13 the victim was his or her current or former spouse, current or former sexual or intimate partner,  
14 person with whom the defendant has a child in common, person with whom the defendant  
15 cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the  
16 defendant's household at the time of the offense or who has previously been granted a period of  
17 pretrial diversion pursuant to §61-11-22. of this code for a violation of subsection (a) or (b) of this  
18 section, or a violation of §61-2-9(b) or §61-2-9(c) of this code or §61-2-14 (a) of this code where  
19 the victim was a current or former spouse, current or former sexual or intimate partner, person  
20 with whom the defendant has a child in common, person with whom the defendant cohabits or  
21 has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's  
22 household at the time of the offense is guilty of a Class I misdemeanor: *Provided*, That limit for  
23 finances thereof shall be doubled, and the person so convicted shall serve 60 actual days of  
24 confinement.

25 A person convicted of a violation of subsection (b) of this section after having been  
26 previously convicted of a violation of subsection (a) or (b) of this section, after having been  
27 convicted of a violation of §61-2-9(b) or §61-2-9(c) of this code or §61-2-14 (a) of this code, where  
28 the victim was a current or former spouse, current or former sexual or intimate partner, person  
29 with whom the defendant has a child in common, person with whom the defendant cohabits or  
30 has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's  
31 household at the time of the offense or having previously been granted a period of pretrial  
32 diversion pursuant to §61-11-22. of this code for a violation of subsection (a) or (b) of this section  
33 or §61-2-9(b), §61-2-9(c) or §61-2-14 (a), or §61-2-14(g) of this code where the victim was a  
34 current or former spouse, current or former sexual or intimate partner, person with whom the  
35 defendant has a child in common, person with whom the defendant cohabits or has cohabited, a

36 parent or guardian, the defendant's child or ward or a member of the defendant's household at  
37 the time of the offense shall be convicted of a Class II misdemeanor: *Provided*, That limit for fines  
38 thereof shall be doubled, and the person so convicted shall serve 30 actual days of confinement.,

39 (d) Any person who has been convicted of a third or subsequent violation of the provisions  
40 of subsection (a) or (b) of this section, a third or subsequent violation of the provisions of §61-2-  
41 9 or §61-2-14(g) of this code, where the victim was a current or former spouse, current or former  
42 sexual or intimate partner, person with whom the defendant has a child in common, person with  
43 whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or  
44 ward or a member of the defendant's household at the time of the offense or who has previously  
45 been granted a period of pretrial diversion pursuant to §61-11-22. of this code for a violation of  
46 subsection (a) or (b) of this section, or a violation of §61-2-9, or §61-2-14(g)(a) all of this code in  
47 which the victim was a current or former spouse, current or former sexual or intimate partner,  
48 person with whom the defendant has a child in common, person with whom the defendant  
49 cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the  
50 defendant's household at the time of the offense, or any combination of convictions or diversions  
51 for these offenses, is guilty of a Class VI felony.

52 (e) As used in this section, "family or household member" means "family or household  
53 member" as defined in §48-27-204 of this code.

54 (f) A person charged with a violation of this section may not also be charged with a violation  
55 of §61-2-9(b) or §61-2-9(c) of this code for the same act.

56 (g) No law-enforcement officer may be subject to any civil or criminal action for false arrest  
57 or unlawful detention for effecting an arrest pursuant to this section or pursuant to §48-27-1002  
58 of this code.

**§61-2-22. Abuse or neglect of incapacitated adult; definitions; penalties**

1 (a) The following words, when used in this section and sections §61-2-23 and §61-2-24 of  
2 this code, have the meaning ascribed, unless the context clearly indicates otherwise:

3 “Abuse” means the intentional infliction of bodily injury on an incapacitated adult;

4 “Bodily injury” means substantial physical pain, illness or any impairment of physical  
5 condition;

6 “Caregiver” means any person who has assumed the legal responsibility or a contractual  
7 obligation for the care of an incapacitated adult or has voluntarily assumed responsibility for the  
8 care of an incapacitated adult. The term includes a facility operated by any public or private  
9 agency, organization or institution which provides services to, and has assumed responsibility for  
10 the care of an incapacitated adult.

11 “Incapacitated adult” means any person eighteen years of age or older who by reason of  
12 advanced age, physical, mental or other infirmity is unable to carry on the daily activities of life  
13 necessary to sustaining life and reasonable health;

14 “Neglect” means the unreasonable failure by a caregiver to provide the care necessary to  
15 assure the physical safety or health of an incapacitated adult; and

16 “Serious bodily injury” means bodily injury which creates a substantial risk of death, which  
17 causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or  
18 impairment of the function of any bodily organ.

19 (b) A caregiver who neglects an incapacitated adult or who knowingly permits another  
20 person to neglect an incapacitated adult is guilty of a Class II misdemeanor.

21 (c) A caregiver who abuses an incapacitated adult or who knowingly permits another  
22 person to abuse an incapacitated adult is guilty of a Class I misdemeanor.

23 (d) A caregiver of an incapacitated adult who intentionally and maliciously abuses or  
24 neglects an incapacitated adult and causes the incapacitated adult bodily injury is guilty of a Class  
25 V felony.

26 (e) A caregiver of an incapacitated adult who intentionally and maliciously abuses or  
27 neglects an incapacitated adult and causes the incapacitated adult serious bodily injury is guilty  
28 of a Class IV felony.

29 (f) Nothing in this section or in §61-2-29a of this code may be construed to mean an adult  
30 is abused or neglected for the sole reason that his or her independent decision is to rely upon  
31 treatment by spiritual means in accordance with the tenets and practices of a recognized church  
32 or religious denomination or organization in lieu of medical treatment.

33 (g) Nothing in this section or in §61-2-29a of this code may be construed to mean an  
34 incapacitated adult is abused or neglected if deprivation of life-sustaining treatment or other act  
35 has been provided for by the West Virginia Health Care Decisions Act, pursuant to §16-30-1 et  
36 seq. of this code.

**§61-2-23. Death of an incapacitated adult by a caregiver; penalties.**

1 (a) A caregiver who intentionally and maliciously neglects an incapacitated adult causing  
2 death is guilty of a Class III felony.

3 (b) A caregiver of an incapacitated adult who causes the death of an incapacitated adult  
4 by knowingly allowing any other person to intentionally or maliciously neglect the incapacitated  
5 adult is guilty of a Class II felony.

6 (c) A caregiver of an incapacitated adult who intentionally and maliciously abuses an  
7 incapacitated adult which causes the death of the incapacitated adult is guilty of a Class I felony.

8 (d) A caregiver of an incapacitated adult who causes the death of an incapacitated adult  
9 by knowingly allowing any other person to intentionally and maliciously abuse an incapacitated  
10 adult is guilty of a Class I felony.

11 (e) The provisions of this section do not apply to any caregiver or health care provider  
12 who, without malice, fails or refuses, or allows another person to, without malice, fail or refuse, to  
13 supply an incapacitated adult with necessary medical care when the medical care conflicts with  
14 the tenets and practices of a recognized religious denomination or order of which the  
15 incapacitated adult is an adherent member.

**§61-2-24. Financial exploitation of an elderly person, protected person or incapacitated**  
**adult; penalties; definitions.**

1       (a) Any person who financially exploits an elderly person, protected person, or an  
2 incapacitated adult in the amount of less than \$2500 is guilty of a Class I misdemeanor.

3       (b) Any person who financially exploits an elderly person, protected person, or an  
4 incapacitated adult in the amount of more than \$2500 but less than \$25000 is guilty of a Class VI  
5 felony.

6       (c) Any person who financially exploits an elderly person, protected person, or an  
7 incapacitated adult in the amount of more than \$25000 is guilty of a Class V felony.

8       (d) Any person convicted of any violation of this section shall, in addition to any other  
9 penalties at law, be subject to an order of restitution.

10       (e) In determining the value of the money, goods, property, or services referred to in  
11 subsection (a), (b) or (c) of this section, cumulated amounts or values where such money, goods,  
12 property or services were fraudulently obtained as part of a common scheme or plan may be  
13 used.

14       (f) Financial institutions and their employees, as defined by §31A-2A-1 of this code and  
15 as permitted by §31A-2A-4 of this code, others engaged in financially related activities, as defined  
16 by §31A-8C-1 of this code, caregivers, relatives, and other concerned persons are permitted to  
17 report suspected cases of financial exploitation to state or federal law-enforcement authorities,  
18 the county prosecuting attorney, and to the Department of Health and Human Resources, Adult  
19 Protective Services Division, or Medicaid Fraud Division, as appropriate. Public officers and  
20 employees shall report suspected cases of financial exploitation to the appropriate entities as  
21 stated above. The requisite agencies shall investigate or cause the investigation of the  
22 allegations.

23       (g) When financial exploitation is suspected and to the extent permitted by federal law,  
24 financial institutions and their employees or other business entities required by federal law or  
25 regulation to file suspicious activity reports and currency transaction reports shall also be  
26 permitted to disclose suspicious activity reports or currency transaction reports to the prosecuting

27 attorney of any county in which the transactions underlying the suspicious activity reports or  
28 currency transaction reports occurred.

29 (h) Any person or entity that in good faith reports a suspected case of financial exploitation  
30 pursuant to this section is immune from civil liability founded upon making that report.

31 (i) For the purposes of this section:

32 (1) "Incapacitated adult" means a person as defined by §61-2-22 of this code;

33 (2) "Elderly person" means a person who is 65 years or older;

34 (3) "Financial exploitation" or "financially exploit" means the intentional misappropriation  
35 or misuse of funds or assets of an elderly person, protected person, or incapacitated adult, but  
36 shall not apply to a transaction or disposition of funds or assets where the accused made a good-  
37 faith effort to assist the elderly person, protected person, or incapacitated adult with the  
38 management of his or her money or other things of value; and

39 (4) "Protected person" means any person who is defined as a "protected person" in §44A-  
40 1-4 of this code and who is subject to the protections of Chapter 44A or Chapter 44C of this code.

41 (j) Notwithstanding any provision of this code to the contrary, acting as guardian,  
42 conservator, trustee or attorney for or holding power of attorney for an elderly person, protected  
43 person or incapacitated adult may not, standing alone, constitute a defense to a violation of  
44 subsections (a), (b) or (c) of this section.

45 (k) Any person who willfully violates a material term of an order entered pursuant to §55-  
46 7J-5 of this code is guilty of a misdemeanor and, upon conviction thereof, shall:

47 (1) For the first offense, be guilty of a Class II misdemeanor; and

48 (2) For a second or subsequent offense, be guilty of a Class I misdemeanor.

**§61-2-25. Recognizing an embryo or fetus as a distinct unborn victim of certain crimes of**  
**violence against the person.**

1 (a) This section may be known and cited as the Unborn Victims of Violence Act.

2 (b) For the purposes of this article, the following definitions shall apply: *Provided, That*

3 these definitions only apply for purposes of prosecution of unlawful acts under this section and  
4 may not otherwise be used: (i) To create or to imply that a civil cause of action exists; or (ii) for  
5 purposes of argument in a civil cause of action, unless there has been a criminal conviction under  
6 this section.

7 “Embryo” means the developing human in its early stages. The embryonic period  
8 commences at fertilization and continues to the end of the embryonic period and the beginning of  
9 the fetal period, which occurs eight weeks after fertilization or 10 weeks after the onset of the last  
10 menstrual period.

11 “Fetus” means a developing human that has ended the embryonic period and thereafter  
12 continues to develop and mature until termination of the pregnancy or birth.

13 (c) For purposes of enforcing the provisions of §61-2-1, §61-2-1, and §61-2-6, of this code,  
14 §61-2-8 and §61-2-9 of this code, and §61-2-21(a) of this code, a pregnant woman and the  
15 embryo or fetus she is carrying in the womb constitute separate and distinct victims.

16 (d) *Exceptions.* -- The provisions of this section do not apply to:

17 (1) Acts committed during a legal abortion to which the pregnant woman, or a person  
18 authorized by law to act on her behalf, consented or for which the consent is implied by law;

19 (2) Acts or omissions by medical or health care personnel during or as a result of medical  
20 or health-related treatment or services, including, but not limited to, medical care, abortion,  
21 diagnostic testing or fertility treatment;

22 (3) Acts or omissions by medical or health care personnel or scientific research personnel  
23 in performing lawful procedures involving embryos that are not in a stage of gestation in utero;

24 (4) Acts involving the use of force in lawful defense of self or another, but not an embryo  
25 or fetus; and

26 (5) Acts or omissions of a pregnant woman with respect to the embryo or fetus she is  
27 carrying.

28 (e) For purposes of the enforcement of the provisions of this section, a violation of the

29 provisions of article two-i, chapter sixteen of this code shall not serve as a waiver of the protection  
30 afforded by the provisions of subdivision (1), subsection (d) of this section.

31 (f) Other convictions not barred. -- A prosecution for or conviction under this section is not  
32 a bar to conviction of or punishment for any other crime committed by the defendant arising from  
33 the same incident.

**§61-2-26. Doors to be removed from abandoned refrigerators, freezers and other appliances; penalties.**

1 [Repealed.]

**§61-2-27. Required reporting of gunshot and other wounds.**

1 [Repealed.]

**§61-2-27a. Required reporting of burns.**

1 [Repealed.]

**§61-2-28. Domestic violence — criminal acts**

1 [Repealed.]

**§61-2-29. Abuse or neglect of incapacitated adult; definitions; penalties**

1 [Repealed.]

**§61-2-29a. Death of an incapacitated adult by a caregiver.**

1 [Repealed.]

**§61-2-29b. Financial exploitation of an elderly person, protected person or incapacitated adult; penalties; definitions.**

1 [Repealed.]

**§61-2-30. Recognizing an embryo or fetus as a distinct unborn victim of certain crimes of violence against the person.**

1 [Repealed]

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-1. Arson; degrees of arson; definitions; penalties. ~~Burning, etc., of a dwelling or~~**

**~~outbuilding; first degree arson; penalty; definitions.~~**

~~(a) Any person who willfully and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any dwelling, whether occupied, unoccupied or vacant, or any outbuilding, whether the property of himself or herself or herself or of another, shall be guilty of arson in the first degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than two nor more than twenty years. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of two years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.~~

(b) As used in this section:

(1) "Dwelling" means any building or structure intended for habitation or lodging, in whole or in part, regularly or occasionally, and shall include, but not be limited to, any house, apartment, hotel, dormitory, hospital, nursing home, jail, prison, mobile home, house trailer, modular home, factory-built home or self-propelled motor home;

(2) "Outbuilding" means any building or structure which adjoins, is part of, belongs to, or is used in connection with a dwelling, and shall include, but not be limited to, any garage, shop, shed, barn or stable.

(b) First degree arson--

(1) Any person who willfully and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices, or solicits any person to burn any occupied dwelling or outbuilding, whether the property of himself or herself or of another, is guilty of a Class III Felony.

(2) Any person who willfully and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices, or solicits any person to burn, any unoccupied or vacant, dwelling or outbuilding, whether the property of himself or herself

26 or of another, is guilty of a Class IV Felony.

27 (c) Second degree arson—

28 Any person who willfully and maliciously sets fire to or burns, or who causes to be burned,  
29 or who aids, counsels, procures, persuades, incites, entices, or solicits any person to burn, any  
30 building or structure of any class or character, whether the property of himself or herself or of  
31 another, not included or prescribed in the preceding subsection, is guilty of arson in the second  
32 degree, a Class V Felony.

33 (d) Third degree arson—

34 Any person who

35 (A) Willfully and maliciously sets fire to or burns, or who causes to be burned, or who aids,  
36 counsels, procures, persuades, incites, entices, or solicits any person to burn, any personal  
37 property of any class or character, of the value of not less than \$2500, and the property of another  
38 person, or

39 (B) Willfully, unlawfully, and maliciously sets fire to any woods, fence, grass, straw or other  
40 thing capable of spreading fire on lands,

41 is guilty of arson in the third degree, a Class VI Felony.

42 (e) Fourth degree arson—

43 Any person who willfully and maliciously sets fire to or burns, or who causes to be burned,  
44 or who aids, counsels, procures, persuades, incites, entices, or solicits any person to burn, any  
45 personal property of any class or character, of the value of less than \$2500, and the property of  
46 another person, is guilty of arson in the fourth degree, a Class I misdemeanor.

47 (f) Attempted arson—

48 (1) Any person who willfully and maliciously attempts to set fire to or burn, or attempts to  
49 cause to be burned, or attempts to aid, counsel, procure, persuade, incite, entice, or solicit any  
50 person to burn, any of the buildings, structures, or personal property mentioned in the foregoing  
51 subsections, or who commits any act preliminary thereto, or in furtherance thereof, is guilty of

52 attempted arson, a Class I misdemeanor.

53 (2) The placing or distributing of any inflammable, explosive or combustible material or  
 54 substance, or any device in any building, structure or personal property mentioned in the  
 55 foregoing sections, in an arrangement or preparation with intent to eventually, willfully and  
 56 maliciously, set fire to or burn, or to cause to be burned, or to aid, counsel, procure, persuade,  
 57 incite, entice or solicit the setting fire to or burning of any building, structure or personal property  
 58 mentioned in the foregoing sections shall, for the purposes of this section, constitutes an attempt  
 59 to burn that building, structure or personal property.

60 (g) A person imprisoned pursuant to the provisions of this section, whose sentence is not  
 61 a result of a guilty plea, is not eligible for parole prior to having served a minimum of one-third of  
 62 the years of his or her sentence or the minimum period required by §62-12-13 of this code,  
 63 whichever is greater.

64 (h) Any person convicted under any of the provisions of this section shall be liable to any  
 65 person injured thereby, or in consequence thereof, for double the amount of actual damages  
 66 sustained by that person.

**~~§61-3-2. Burning, etc., of other buildings or structures; second degree arson; penalty.~~**

**Burning, or attempting to burn, insured property; penalty.**

1 ~~Any person who willfully and maliciously sets fire to or burns, or who causes to be burned,~~  
 2 ~~or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any~~  
 3 ~~building or structure of any class or character, whether the property of himself or herself or of~~  
 4 ~~another, not included or prescribed in the preceding section, shall be guilty of arson in the second~~  
 5 ~~degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of~~  
 6 ~~imprisonment which is not less than one nor more than ten years. A person imprisoned pursuant~~  
 7 ~~to this section is not eligible for parole prior to having served a minimum of one year of his or her~~  
 8 ~~sentence or the minimum period required by the provisions of section thirteen, article twelve,~~  
 9 ~~chapter sixty-two of this code, whichever is greater.~~

10 Any person who willfully, and with intent to injure or defraud an insurer, sets fire to, or  
 11 burns, or attempts to do so, or causes to be burned, or who aids, counsels, procures, persuades,  
 12 incites, entices or solicits any person to burn, any building, structure or personal property, of any  
 13 class or character, whether the property of himself or herself or of another, which at the time is  
 14 insured, or which is believed by the person committing an act prohibited by this section to be  
 15 insured by any person against loss or damage by fire, is guilty of a Class VI felony. A person  
 16 imprisoned pursuant to this section, who committed the crime with an intent to defraud, is not  
 17 eligible for parole prior to having served a minimum of one-third of the years of his or her sentence  
 18 or the minimum period required by §62-12-13 of this code, whichever is greater.

**~~§61-3-3. Burning personal property of another of the value of five hundred dollars or more;~~**  
**~~third degree arson; penalty;~~** **Causing injuries during an arson-related crime;**  
**penalties.**

1 ~~Any person who willfully and maliciously sets fire to or burns, or who causes to be burned,~~  
 2 ~~or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any~~  
 3 ~~personal property of any class or character, of the value of not less than \$500, and the property~~  
 4 ~~of another person, shall be guilty of arson in the third degree and, upon conviction thereof, be~~  
 5 ~~sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor~~  
 6 ~~more than three years. A person imprisoned pursuant to this section is not eligible for parole prior~~  
 7 ~~to having served a minimum of one year of his or her sentence.~~

8 (a) Any person who violates §61-2-1 or §61-2-2 of this code, which violation causes bodily  
 9 injury, but which does not result in death, to any person, is guilty of a felony one class higher than  
 10 the underlying offense.

11 (b) Any person who violates §61-2-1 or §61-2-2 of this code, which violation causes  
 12 serious bodily injury which maims, disfigures, or disables any person, but does not result in death,  
 13 is guilty of a felony one class higher than the underlying offense. A person imprisoned pursuant  
 14 to this section is not eligible for parole prior to having served a minimum of one-third of the years

15 of his or her sentence or the minimum period required by §62-12-13 of this code, whichever is  
16 greater.

17 (c) As used in this section:

18 “Bodily injury” means injury that causes substantial physical pain, illness, or any  
19 impairment of physical condition; and

20 “Serious bodily injury” means bodily injury that creates a substantial risk of death, that  
21 causes serious or prolonged disfigurement, prolonged impairment of health, prolonged loss or  
22 impairment of the function of any bodily organ, loss of pregnancy, or the morbidity or mortality  
23 occurring because of a preterm delivery.

**§61-3-4. ~~Attempt to commit arson; fourth degree arson; penalty; Recovery of costs~~**  
**incurred in fighting fires caused by arson.**

1 ~~(a) Any person who willfully and maliciously attempts to set fire to or burn, or attempts to~~  
2 ~~cause to be burned, or attempts to aid, counsel, procure, persuade, incite, entice or solicit any~~  
3 ~~person to burn, any of the buildings, structures, or personal property mentioned in the foregoing~~  
4 ~~sections, or who commits any act preliminary thereto, or in furtherance thereof, shall be guilty of~~  
5 ~~arson in the fourth degree and, upon conviction thereof, be sentenced to the penitentiary for a~~  
6 ~~definite term of imprisonment which is not less than one nor more than two years, or fined not to~~  
7 ~~exceed \$2,500, or both. A person imprisoned pursuant to this section is not eligible for parole~~  
8 ~~prior to having served a minimum of one year of his or her sentence.~~

9 ~~(b) The placing or distributing of any inflammable, explosive or combustible material or~~  
10 ~~substance, or any device in any building, structure or personal property mentioned in the~~  
11 ~~foregoing sections, in an arrangement or preparation with intent to eventually, willfully and~~  
12 ~~maliciously, set fire to or burn, or to cause to be burned, or to aid, counsel, procure, persuade,~~  
13 ~~incite, entice or solicit the setting fire to or burning of any building, structure or personal property~~  
14 ~~mentioned in the foregoing sections shall, for the purposes of this section, constitute an attempt~~  
15 ~~to burn that building, structure or personal property.~~

16 Any person convicted of any crime enumerated in §61-2-1 or §61-2-2 of this code may be  
 17 ordered to reimburse any fire department or company for the costs expended to control,  
 18 extinguish and suppress the arson fire, and all reasonable costs associated therewith, including  
 19 but not limited to, costs for the personal services rendered by any employees of any fire  
 20 department or company, and operating costs of equipment and supplies used to control,  
 21 extinguish or suppress the fire.

**§61-3-5. Burning, or attempting to burn, insured property; penalty; Burglary; entry of dwelling house or outbuilding; penalties.**

1 ~~Any person who willfully and with intent to injure or defraud an insurer sets fire to or burns,~~  
 2 ~~or attempts so to do, or causes to be burned, or who aids, counsels, procures, persuades, incites,~~  
 3 ~~entices or solicits any person to burn, any building, structure or personal property, of any class or~~  
 4 ~~character, whether the property of himself or herself or of another, which shall at the time be~~  
 5 ~~insured or which is believed by the person committing an act prohibited by this section to be~~  
 6 ~~insured by any person against loss or damage by fire, guilty of a felony and, upon conviction~~  
 7 ~~thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than~~  
 8 ~~one nor more than five years or fined not to exceed \$10,000, or both. A person imprisoned~~  
 9 ~~pursuant to this section is not eligible for parole prior to having served a minimum of one year of~~  
 10 ~~his or her sentence or the minimum period required by the provisions of §62-12-13 of this code,~~  
 11 ~~whichever is greater.~~

12 (a) Any person who breaks and enters, or enters without breaking, a dwelling house or  
 13 outbuilding adjoining a dwelling with the intent to commit a violation of the criminal laws of this  
 14 state is guilty of a Class IV felony.

15 (b) The term "dwelling house", as used in this section, includes, but is not limited to, a  
 16 mobile home, house trailer, modular home, factory-built home, or self-propelled motor home, used  
 17 as a dwelling regularly or only from time to time, or any other nonmotorized vehicle primarily  
 18 designed for human habitation and occupancy and used as a dwelling regularly or only from time

19 to time.

**§61-3-6. Willfully, unlawfully, and maliciously setting fire on lands; Penalty; entry of house, building, vehicle, or enclosed property; penalties; counts in indictment.**

1 If any person willfully, unlawfully, and maliciously sets fire to any woods, fence, grass,  
 2 straw or other thing capable of spreading fire on lands, he or she shall be is guilty of a felony and,  
 3 upon conviction, shall be sentenced to the penitentiary for a definite term of imprisonment which  
 4 is not less than one year nor more than five years or fined not to exceed \$5,000, or both. He or  
 5 she shall, moreover, be liable to any person injured thereby, or in consequence thereof, for double  
 6 the amount of damages sustained by such person. A person imprisoned pursuant to this section  
 7 is not eligible for parole prior to having served a minimum of one year of his or her sentence or  
 8 the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-  
 9 two of this code, whichever is greater

10 Any person who, at any time, breaks and enters, or enters without breaking, any office,  
 11 shop, storehouse, warehouse, banking house, any other house or building which is not a dwelling  
 12 house or outbuilding adjoining or occupied in conjunction with the same, any vehicle, conveyance  
 13 or vessel, or any commercial, industrial or public utility property enclosed by a fence, wall, or other  
 14 structure erected with the intent of the property owner of protecting or securing the area within  
 15 and its contents from unauthorized persons, within the jurisdiction of any county in this state, with  
 16 intent to commit a felony or any larceny, is guilty of a Class VI felony.

17 An indictment for burglary may contain one or more counts for breaking and entering, or  
 18 for entering without breaking, the house or building mentioned in the count for burglary under the  
 19 provisions of this section and §61-3-11 of this code.

**§61-3-7. Causing injuries during an arson-related crime; penalties; Manufacture or possession of burglary tools; penalties.**

1 (a) Any person who violates the provisions of sections one, two, three, four, five or six of  
 2 this article, which violation causes bodily injury, but does not result in death, to any person shall

3 ~~be guilty of a felony and, upon conviction thereof, shall be sentenced to the penitentiary for a~~  
4 ~~definite term of imprisonment which is not less than two nor more than ten years, or fined not~~  
5 ~~more than \$5,000, or both. A person imprisoned pursuant to this section is not eligible for parole~~  
6 ~~prior to having served a minimum of two years of his or her sentence or the minimum period~~  
7 ~~required by the provisions of section thirteen, article twelve, chapter sixty-two of this code,~~  
8 ~~whichever is greater.~~

9 (b) ~~Any person who violates the provisions of sections one, two, three, four, five or six of~~  
10 ~~this article, which violation causes serious bodily injury which maims, disfigures, or disables any~~  
11 ~~person, but does not result in death, shall be guilty of a felony and, upon conviction thereof, shall~~  
12 ~~be sentenced to the penitentiary for a definite term of imprisonment which is not less than three~~  
13 ~~nor more than fifteen years, or fined not more than \$10,000, or both. A person imprisoned~~  
14 ~~pursuant to this section is not eligible for parole prior to having served a minimum of three years~~  
15 ~~of his or her sentence or the minimum period required by the provisions of section thirteen, article~~  
16 ~~twelve, chapter sixty-two of this code, whichever is greater.~~

17 Any person who manufactures or has in his or her possession any tool, instrument or other  
18 thing adapted, designed or commonly used for committing, advancing or facilitating offenses  
19 involving unlawful entry into a premises, theft by a physical taking, or offenses involving forcible  
20 breaking of safes or other containers or safe-like depositories of property, under circumstances  
21 that manifest or demonstrate an intent to use, or has knowledge that another person intends to  
22 use the same in the commission of an offense of the same kind or character, is guilty of a Class  
23 I misdemeanor.

**~~§61-3-8. Recovery of costs incurred in fighting fires caused by arson~~ Criminal offenses  
involving theft detection shielding devices; detention.**

1 ~~Any person convicted of any felony enumerated in section one, two, three, four, five or six~~  
2 ~~of this article may be ordered to reimburse any fire department or company for the costs expended~~  
3 ~~to control, extinguish and suppress the arson fire, and all reasonable costs associated therewith,~~

4 ~~including but not limited to, costs for the personal services rendered by any employees of any fire~~  
5 ~~department or company, and operating costs of equipment and supplies used to control,~~  
6 ~~extinguish or suppress the fire.~~

7 (a) As used in this section:

8 “Theft detection device” means any tag or other device that is used to prevent or detect  
9 theft and that is attached to merchandise held for resale by a merchant or to property of a  
10 merchant.

11 “Theft detection device remover” means any tool or device specifically designed or  
12 manufactured to be used to remove a theft detection device from merchandise held for resale by  
13 a merchant or property of a merchant.

14 “Theft detection shielding device” means any laminated or coated bag or device designed  
15 to shield merchandise held for resale by a merchant or property of a merchant from being detected  
16 by an electronic or magnetic theft alarm sensor.

17 (b) A person commits unlawful distribution of a theft detection shielding device when he  
18 or she knowingly manufactures, sells, offers to sell or distribute any theft detection shielding  
19 device.

20 (c) A person commits unlawful possession of a theft detection shielding device when he  
21 or she knowingly possesses any theft detection shielding device with the intent to commit theft or  
22 retail theft.

23 (d) A person commits unlawful possession of a theft detection shielding device remover  
24 when he or she knowingly possesses any theft detection device remover with the intent to use  
25 such tool to remove any theft detection device from any merchandise without the permission of  
26 the merchant or person owning or holding said merchandise.

27 (e) A person commits unlawful use of a theft detection shielding device or a theft detection  
28 shielding remover when he or she uses or attempts to use either device while committing a  
29 violation of this article.

30 (f) A person commits unlawful removal of a theft detection device when he or she  
31 intentionally removes any theft detection device by the use of manual force or by any tool or  
32 device, which is not specifically designed or manufactured to remove theft detection devices, from  
33 merchandise prior to purchase.

34 (g) Any person convicted for violating the provisions of subsections (b), (c), (d) or (e) of  
35 this section is guilty of a Class II misdemeanor.

36 (h) Any person convicted of violating the provisions of subsection (f) of this section is guilty  
37 of a Class III misdemeanor.

38 (i) The activation of an anti-shoplifting or inventory control device as a result of a person  
39 exiting the establishment or a protected area within the establishment constitutes reasonable  
40 cause for the detention of the person so exiting by the owner or operator or the establishment or  
41 by an agent or employee of the owner or operator, provided sufficient notice has been posted to  
42 advise the patrons that such a device is being utilized. Each such detention shall be made only  
43 in a reasonable manner and only for a reasonable period of time sufficient for any inquiry into the  
44 circumstances surrounding the activation of the device or for the recovery of goods.

45 (j) Such taking into custody and detention by a law-enforcement officer, merchant, or  
46 merchant's employee, if done in compliance with all the requirements of this section, does not  
47 render such law-enforcement officer, merchant, or merchant's employee criminally or civilly liable  
48 for false arrest, false imprisonment, or unlawful detention.

**§61-3-9. Grand larceny, aggravated grand larceny, and petit larceny distinguished;**  
**penalties; Larceny of bank notes, checks, writings of value and book accounts;**  
**determination of value.**

1 (a) Any person who commits simple larceny of goods or chattels of the value of \$2,500 or  
2 more, is guilty of a Class VI felony, designated grand larceny.

3 (b) Any person who commits simple larceny of goods or chattels of the value of \$25,000  
4 or more, is guilty of a Class V felony, designated aggravated grand larceny.

5 (c) Any person who commits simple larceny of goods or chattels of the value of less than  
6 \$2,500, is guilty of a Class I misdemeanor, designated petit larceny.

7 (d) Any person who steals any bank note, check, or other writing or paper of value, or any  
8 book of accounts for or concerning money or goods due to be delivered, is guilty of the larceny  
9 thereof, and shall receive the same punishment, according to the value of the article stolen, that  
10 is prescribed for the punishment of larceny of goods or chattels.

11 (e) In a prosecution under this section, the money due on or secured by the writing, paper,  
12 or book, and remaining unsatisfied, or which in any event might be collected thereon, or the value  
13 of the property or money affected thereby, shall be considered to be the value of the article stolen.

**§61-3-10. Receiving or transferring stolen goods.**

1 Any person who buys or receive from another person, or aid in concealing, or transfer to  
2 a person other than the owner thereof, any stolen goods or other thing of value, which he or she  
3 knows or has reason to believe has been stolen, is guilty of the larceny thereof and may be  
4 prosecuted although the principal offender is not convicted.

**§61-3-11. Burglary; entry of dwelling or outhouse; penalties; Bringing into this state,**  
**receiving, or disposing of property stolen in another state; penalty.**

1 ~~(a) Any person who breaks and enters, or enters without breaking, a dwelling house or~~  
2 ~~outbuilding adjoining a dwelling with the intent to commit a violation of the criminal laws of this~~  
3 ~~state is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional~~  
4 ~~facility for not less than one nor more than 15 years.~~

5 ~~(b) The term "dwelling house", as used in §61-3-11(a) of this code, includes, but is not~~  
6 ~~limited to, a mobile home, house trailer, modular home, factory-built home, or self-propelled motor~~  
7 ~~home, used as a dwelling regularly or only from time to time, or any other nonmotorized vehicle~~  
8 ~~primarily designed for human habitation and occupancy and used as a dwelling regularly or only~~  
9 ~~from time to time.~~

10 Any person, who brings into this state, or receives, converts to his or her own use, or sells,

11 property of any character, of value, which was stolen in another state, and which he or she knows  
 12 or has reason to believe was stolen, is guilty of the larceny thereof in the county in which such  
 13 property may be found, used, converted, or sold, and may be prosecuted for the offense therein,  
 14 and, upon conviction, shall be punished as provided for the offense of larceny committed within  
 15 this state.

**~~§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat, or other vessel; penalties; counts in indictment; Embezzlement.~~**

1 If any person shall, at any time, break and enter, or shall enter without breaking, any office,  
 2 shop, storehouse, warehouse, banking house, or any house or building, other than a dwelling  
 3 house or outhouse adjoining thereto or occupied therewith, any railroad or traction car, propelled  
 4 by steam, electricity or otherwise, any steamboat or other boat or vessel, or any commercial,  
 5 industrial or public utility property enclosed by a fence, wall, or other structure erected with the  
 6 intent of the property owner of protecting or securing the area within and its contents from  
 7 unauthorized persons, within the jurisdiction of any county in this state, with intent to commit a  
 8 felony or any larceny, he or she shall be deemed guilty of a felony and, upon conviction, shall be  
 9 confined in a state correctional facility not less than one nor more than 10 years. And if any person  
 10 shall, at any time, break and enter, or shall enter without breaking, any automobile, motorcar, or  
 11 bus, with like intent, within the jurisdiction of any county in this state, he or she shall be guilty of a  
 12 misdemeanor and, upon conviction, shall be confined in jail not less than two nor more than 12  
 13 months and be fined not exceeding \$100.

14 An indictment for burglary may contain one or more counts for breaking and entering, or  
 15 for entering without breaking, the house or building mentioned in the count for burglary under the  
 16 provisions of this section and §61-3-11 of this code.

17 If any person shall, at any time, break and enter, or shall enter without breaking, any office,  
 18 shop, storehouse, warehouse, banking house, or any house or building, other than a dwelling  
 19 house or outhouse adjoining thereto or occupied therewith, any railroad or traction car, propelled

20 ~~by steam, electricity or otherwise, any steamboat or other boat or vessel, or any commercial,~~  
21 ~~industrial or public utility property enclosed by a fence, wall, or other structure erected with the~~  
22 ~~intent of the property owner of protecting or securing the area within and its contents from~~  
23 ~~unauthorized persons, within the jurisdiction of any county in this state, with intent to commit a~~  
24 ~~felony or any larceny, he or she shall be deemed guilty of a felony and, upon conviction, shall be~~  
25 ~~confined in a state correctional facility not less than one nor more than 10 years. And if any person~~  
26 ~~shall, at any time, break and enter, or shall enter without breaking, any automobile, motorcar, or~~  
27 ~~bus, with like intent, within the jurisdiction of any county in this state, he or she shall be guilty of a~~  
28 ~~misdemeanor and, upon conviction, shall be confined in jail not less than two nor more than 12~~  
29 ~~months and be fined not exceeding \$100.~~

30 ~~An indictment for burglary may contain one or more counts for breaking and entering, or~~  
31 ~~for entering without breaking, the house or building mentioned in the count for burglary under the~~  
32 ~~provisions of this section and §61-3-11 of this code.~~

33 (a) (1) Any officer, agent, clerk, or servant of this state, or of any county, district, school  
34 district or municipal corporation, or of any banking institution, or other corporation, or any officer  
35 of public trust in this state, or any agent, clerk or servant of any firm or person, or company or  
36 association of persons not incorporated who:

37 (A) Embezzles or fraudulently converts to his or her own use, bullion, money, bank notes,  
38 drafts, security for money, or any effects or property of any other person, which have come into  
39 his or her possession, or been placed under his or her care or management, by virtue of his or  
40 her office, place, or employment; or

41 (B) Embezzles or fraudulently converts to his or her own use, any funds obtained by the  
42 use of any card, plate, code, account number, or other means of account access that can be  
43 used, alone, or in conjunction with another access device, to obtain money, goods, services, or  
44 any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer  
45 originated solely by paper instrument);

46 (2) Is guilty of the larceny of the value thereof.

47 (b) Any officer, agent, clerk, or servant of this state, or of any county, district, school district  
48 or municipal corporation who appropriates or uses for his or her own benefit, or for the benefit of  
49 any other person, any bullion, money, bank notes, drafts, security for money or funds belonging  
50 to this state or to any such county, district, school district or municipal corporation, shall be  
51 determined to have embezzled the same and is guilty of the larceny of the value thereof. In the  
52 prosecution of any such officer, agent, clerk or servant of this state or of any county, district,  
53 school district or municipal corporation charged with appropriation or use for his or her own benefit  
54 or the benefit of any other person, any bullion, money, bank notes, drafts, security for money or  
55 funds belonging to this state or to any county, district, school district or municipal corporation, it  
56 is not necessary to describe in the indictment, or to identify upon the trial, the particular bullion,  
57 money, bank notes, drafts, security for money or funds appropriated or used for his or her own  
58 benefit or for the benefit of any other person.

59 (c) Any person who holds a fiduciary power of attorney or who has a fiduciary relationship  
60 with a person and in so doing willfully and with intent to defraud embezzles, misappropriates or  
61 fraudulently converts for his or her own benefit, or for the benefit of another, the assets or property,  
62 real or personal, with which he or she has been entrusted, or misuses or misappropriates funds  
63 from the person to whom he or she owes a fiduciary duty or misuses any account, line of credit  
64 or credit card of the principal for purposes not contemplated by the terms of the power of attorney  
65 instrument or fiduciary relationship, or for purposes not intended by the principal in the execution  
66 of the power of attorney or for purposes not intended by the fiduciary relationship, shall be  
67 determined to have embezzled the same and, upon conviction, is guilty of the larceny of the value  
68 thereof: *Provided*, That he or she is guilty of a felony one class higher than the underlying offense.

69 (d) Any carrier or other person to whom money or other property which may be the subject  
70 of larceny may be delivered to be carried for hire, or if any other person who may be entrusted  
71 with such property who embezzles or fraudulently converts to his or her own use, or secretes with

72 intent to do so, any such property, either in mass or otherwise, before delivery thereof at the place  
73 at which, or to the person to whom, they were to be delivered, is guilty of the larceny of the value  
74 thereof: *Provided*, That he or she is guilty of a felony one class higher than the underlying offense.

75 (e) Any person guilty of a violation of any provision of this section is an officer, agent, clerk,  
76 or servant of any banking institution, is guilty of a felony one class higher than the underlying  
77 offense.

78 (f) It is not necessary to describe with specificity in the indictment of any person, or to  
79 identify upon the trial of any person, the particular bullion, money, bank note, draft or security for  
80 money, funds, or other property which is so taken, converted, or embezzled.

**§61-3-13. Grand and petit larceny distinguished; penalties; Falsifying accounts; penalty**

1 (a) If a person commits simple larceny of goods or chattels of the value of \$1,000 or more,  
2 such person is guilty of a felony, designated grand larceny, and, upon conviction thereof, shall be  
3 imprisoned in the penitentiary not less than one nor more than ten years, or, in the discretion of  
4 the court, be confined in jail not more than one year and shall be fined not more than \$2,500.

5 (b) If a person commits simple larceny of goods or chattels of the value of less than \$1,000,  
6 such person is guilty of a misdemeanor, designated petit larceny, and, upon conviction thereof,  
7 shall be confined in jail for a term not to exceed one year or fined not to exceed \$2,500, or both,  
8 in the discretion of the court.

9 Any officer, clerk or agent of this state, or of any county, district, school district or municipal  
10 corporation thereof, or of any banking institution or incorporated company, or any clerk or agent  
11 of any firm or person or association of persons not incorporated, who makes, alters or omits to  
12 make any entry in any book of account of, or in any account kept by the state, county, district,  
13 school district, municipal corporation, banking institution, incorporated company, firm or person,  
14 or association of persons, or mutilates, destroys or conceals any such account or book of  
15 accounts, with intent in so doing to conceal, the true state of any account, or to defraud the state  
16 or any county, district, school district, municipal corporation, banking institution, company, firm or

17 person, or with intent to enable or assist any person to obtain money to which he or she was not  
18 entitled, is guilty of a Class V felony.

**§61-3-14. Larceny of bank notes, checks, writings of value and book accounts; penalty;**  
**Possession or use of automated sales suppression devices; penalty.**

1 If any person steal any bank note, check, or other writing or paper of value, or any book  
2 of accounts for or concerning money or goods due to be delivered, he or she shall be deemed  
3 guilty of the larceny thereof, and receive the same punishment, according to the value of the  
4 article stolen, that is prescribed for the punishment of larceny of goods or chattels.

5 (a) General. -- When used in this article, words defined in subsection (b) of this section  
6 shall have the meanings ascribed to them in this section, except in those instances where a  
7 different meaning is provided in this article or the context in which the word is used clearly  
8 indicates that a different meaning is intended by the Legislature.

9 (b) Definitions. --

10 “Automated sales suppression device” or “zapper” means a software program, carried on  
11 a memory stick or removable compact disc, accessed through an Internet link, or accessed  
12 through any other means, that falsifies the electronic records of electronic cash registers and  
13 other point-of-sale systems, including, but not limited to, transaction data and transaction reports.

14 “Electronic cash register” means a device that keeps a register or supporting documents  
15 through the means of an electronic device or computer system designed to record transaction  
16 data for the purpose of computing, compiling, or processing retail sales transaction data in  
17 whatever manner.

18 “Phantom-ware” means a hidden, preinstalled, or installed at a later time programming  
19 option embedded in the operating system of an electronic cash register or hardwired into the  
20 electronic cash register that can be used to create a virtual second till or may eliminate or  
21 manipulate transaction records that may or may not be preserved in digital formats to represent  
22 the true or manipulated record of transactions in the electronic cash register.

23 “Transaction data” includes items purchased by a customer, the price for each item, a  
 24 taxability determination for each item, a segregated tax amount for each of the taxed items, the  
 25 amount of cash or credit tendered, the net amount returned to the customer in change, the date  
 26 and time of the purchase, the name, address and identification number of the vendor and the  
 27 receipt or invoice number of the transaction.

28 “Transaction report” means a report documenting, but not limited to, the sales taxes  
 29 collected, media totals and discount voids at an electronic cash register that is printed on cash  
 30 register tape at the end of a day or shift, or a report documenting every action at an electronic  
 31 cash register that is stored electronically.

32 (c) It is unlawful to sell willfully and knowingly, purchase, install, transfer or possess in this  
 33 state any automated sales suppression device or zapper or phantom-ware.

34 (d) Any person convicted of a violation of subsection (c) of this section is guilty of a Class  
 35 VI felony; and, is liable for all taxes and penalties due the state as the result of the fraudulent use  
 36 of an automated sales suppression device, zapper or phantom-ware and shall forfeit all profits  
 37 associated with the sale or use of an automated sales suppression device or phantom-ware.

38 (f) An automated sales suppression device or phantom-ware and any cash register or  
 39 device containing such device or software is contraband and, as such, subject to seizure and  
 40 destruction by any duly authorized law-enforcement agency in the state, including the Criminal  
 41 Investigation Division of the State Tax Department.

**§61-3-15. How value of notes, book accounts and other writings determined; Destroying**  
**or concealing will; embezzlement by fiduciary; penalty.**

1 ~~In a prosecution under the preceding section, the money due on or secured by the writing,~~  
 2 ~~paper or book, and remaining unsatisfied, or which in any event might be collected thereon, or~~  
 3 ~~the value of the property or money affected thereby, shall be deemed to be the value of the article~~  
 4 ~~stolen.~~

5 Any person, who fraudulently destroys or conceals any will or codicil, with intent to prevent

6 the probate thereof, is guilty of a Class VI felony.

7 Any guardian, personal representative, or other fiduciary, who willfully and knowingly fails  
 8 to make and return an inventory of any personal property (of which an inventory is required by  
 9 law to be made) which may come to his or her hands as such, or willfully and knowingly fails or  
 10 refuses to produce any such property for appraisal in the manner required by law, or willfully  
 11 and knowingly conceals or embezzles any such property, is guilty of the larceny of the value  
 12 thereof; and the failure of any such guardian, personal representative or other fiduciary to account  
 13 for and pay over or deliver, when directed by the court, as required by law, any money, bullion,  
 14 bank notes or other property, determined by the proper officer of court to be due and payable, is  
 15 be prima facie evidence that such guardian, personal representative or other fiduciary has  
 16 embezzled the same.

**§61-3-16. Larceny of things savoring of realty; Obtaining money, property, and services by**  
**false pretenses; disposing of property to defraud creditors; penalties.**

1 ~~Things which savor of the realty, and are at the time they are taken part of the freehold,~~  
 2 ~~whether they be of the substance or produce thereof, or affixed thereto, shall be deemed goods~~  
 3 ~~and chattels, of which larceny may be committed, although there be no interval between the~~  
 4 ~~severing and taking away.~~

5 (a)(1) Any person who obtains by false pretense, token, or representation, with intent to  
 6 defraud, any money, goods or other property which may be the subject of larceny; or

7 (2) Any person who obtains, on credit, any money, goods, or other property which may be  
 8 the subject of larceny, by representing that there is money due him or her or to become due him  
 9 or her, and assigns the claim for such money, in writing, to the person from whom he or she  
 10 obtains such money, goods or other property, and afterwards collects the money due or to  
 11 become due, without the consent of the assignee, and with the intent to defraud; then

12 (3) Is guilty of larceny of the value thereof.

13 (b) Any person who obtains by any false pretense, token, or representation, with intent to

14 defraud, the signature of another to a writing, the false making of which would be forgery, is guilty  
15 of a Class VI felony.

16 (c)(1) Any person who removes any of his or her property out of any county with the intent  
17 to prevent the same from being levied upon by any execution; or

18 (2) Any person who secretes, assigns, or conveys, or otherwise disposes of any of his or  
19 her property with the intent to defraud any creditor or to prevent the property from being made  
20 liable for payment of debts; or

21 (3) Any person who receives the property of another with the intent to defraud any creditor  
22 or to prevent the property from being made liable for the payment of debts;

23 (4) Is guilty of a Class I misdemeanor.

24 (d) (1) Any person, firm, or corporation that obtains labor, services or any other such thing  
25 of value by any false pretense, token, or representation, with intent to defraud, the person, firm or  
26 corporation is guilty of theft of services and is guilty of the larceny of the value thereof;

27 (2) Theft of services includes the obtaining of a stop payment order on a check, draft or  
28 order for payment of money owed for services performed in good faith and in substantial  
29 compliance with a written or oral contract for services, with the fraudulent intent to permanently  
30 deprive the provider of such labor, services or other such thing of value of the payment  
31 represented by such check, draft or order, and any person, firm or corporation violating the  
32 provisions of this subdivision is guilty of the larceny of the value thereof.

33 (e) Prosecution for an offense under this section does not bar or otherwise affect adversely  
34 any right or liability to damages, forfeiture or other civil remedy arising from any or all elements of  
35 the criminal offense.

**§61-3-17. Attempted or fraudulent use, forgery, traffic of credit cards; possession and**  
**transfer of credit cards and credit card making equipment; false or fraudulent use**  
**of telephonic services; penalties.**

1 (a) As used in this section:

2 “Counterfeit credit card” means the following:

3 Any credit card or a representation, depiction, facsimile, aspect, or component thereof that  
4 is counterfeit, fictitious, altered, forged, lost, stolen, incomplete or obtained in violation of this  
5 section, or as part of a scheme to defraud; or

6 Any invoice, voucher, sales draft or other reflection or manifestation of such a card.

7 “Credit card making equipment” means any equipment, machine, plate mechanism,  
8 impression or any other contrivance which can be used to produce a credit card, a counterfeit  
9 credit card, or any aspect or component of either.

10 “Traffic” means:

11 To sell, transfer, distribute, dispense, or otherwise dispose of any property; or

12 To buy, receive, possess, obtain control of or use property with the intent to sell, transfer,  
13 distribute, dispense or otherwise dispose of such property.

14 “Notice” means either information given in person or information given in writing to the  
15 person to whom the number, card or device was issued. The sending of a notice in writing by  
16 registered or certified mail in the United States mail, duly stamped and addressed to that person  
17 at his or her last known address, is prima facie evidence that such notice was duly received. A  
18 cardholder’s knowledge of the revocation of his or her credit card may be reasonably inferred by  
19 evidence that notice of such revocation was mailed to him or her, at least four days prior to his or  
20 her use or attempted use of the credit card, by first class mail at his or her last known address.

21 (b)(1) It is unlawful for any person knowingly to obtain or attempt to obtain credit, or to  
22 purchase or attempt to purchase any goods, property or service, by the use of any false, fictitious  
23 or counterfeit credit card, telephone number, credit number or other credit device, or by the use  
24 of any credit card, telephone number, credit number or other credit device of another beyond or  
25 without the authority of the person to whom the card, number or device was issued, or by the use  
26 of any credit card, telephone number, credit number or other credit device in any case where the  
27 card, number or device has been revoked and notice of such revocation has been given to the

28 person to whom issued.

29 (2) It is unlawful for any person knowingly to obtain or attempt to obtain, by the use of any  
30 fraudulent scheme, device, means or method, telephone or telegraph service or the transmission  
31 of a message, signal or other communication by telephone or telegraph, or over telephone or  
32 telegraph facilities with intent to avoid payment of charges therefor.

33 (3) Any person who violates any provision of this subsection is guilty of the larceny of the  
34 value of the credit, goods, property, or service obtained or attempted to be obtained.

35 (c) Any person who makes, manufactures, presents, embosses, alters, or utters a credit  
36 card with intent to defraud any person, issuer of credit or organization providing money, goods,  
37 services, or anything else of value in exchange for payment by credit card is guilty of forgery, a  
38 Class VI felony.

39 (d) Any person who traffics in or attempts to traffic in ten or more counterfeit credit cards  
40 or credit card account numbers of another in any six-month period is guilty of a Class VI felony.

41 (e) Any person who receives, possesses, transfers, buys, sells, controls or has custody of  
42 any credit card making equipment with intent that the equipment be used in the production of  
43 counterfeit credit cards is guilty of a Class VI felony.

44 (f) Any person who knowingly receives, possesses, acquires, controls or has custody of  
45 a counterfeit credit card is guilty of a Class I misdemeanor.

**§61-3-18. Receiving or transferring stolen goods; Intercepting or monitoring customer**  
**telephone calls; penalty.**

1 ~~If any person buy or receive from another person, or aid in concealing, or transfer to a~~  
2 ~~person other than the owner thereof, any stolen goods or other thing of value, which he or she~~  
3 ~~knows or has reason to believe has been stolen, he or she shall be deemed guilty of the larceny~~  
4 ~~thereof, and may be prosecuted although the principal offender be not convicted.~~

5 (a) It is unlawful for any person, firm or corporation to intercept or monitor, or to attempt to  
6 intercept or monitor, the transmission of a message, signal or other communication by telephone

7 between an employee or similar agent of that person, firm or corporation and a customer of that  
8 person, firm or corporation unless the person, firm or corporation notifies each employee or agent  
9 subject to interception or monitoring that their telephone messages are subject to interception or  
10 monitoring. Any person, firm or corporation violating the provisions of this section is guilty of a  
11 Class III misdemeanor.

12 (b) Nothing contained in this section may require marking of telephone instruments nor  
13 require consent to interception or monitoring, in the case of a wiretap or other form of monitoring  
14 which is engaged in for the sole purpose of law enforcement and which is lawful in all other  
15 respects.

16 (c) The Public Service Commission may not issue any rule or regulation requiring or  
17 suggesting the monitoring of any message, signal or other communication by telephone to or from  
18 any telephone utility customer so as to obtain the content or substance of any such  
19 communication.

**~~§61-3-19. Bringing into this state, receiving, or disposing of property stolen in another~~**  
**~~state; penalty; Fraudulent schemes; cumulation of amounts where common~~**  
**~~scheme exists; penalties.~~**

1 ~~If any person shall bring into this state, or shall receive, convert to his or her own use, or~~  
2 ~~sell, property of any character, of value, which was stolen in another state, and which he or she~~  
3 ~~knows or has reason to believe was stolen, he or she shall be deemed guilty of the larceny thereof~~  
4 ~~in the county in which such property may be found, used, converted or sold, and may be~~  
5 ~~prosecuted for such offense therein, and, upon conviction, shall be punished as provided for the~~  
6 ~~offense of larceny committed within this state.~~

7 (a) Any person who willfully deprives another person of any money, goods, property, or  
8 services by means of fraudulent pretenses, representations or promises is guilty of the larceny of  
9 the value thereof.

10 (b) In determining the value of the money, goods, property, or services referred to in

11 subsection (a) of this section, it is permissible to cumulate amounts or values where such money,  
 12 goods, property or services were fraudulently obtained as part of a common scheme or plan.

13 (c) A violation of law may be prosecuted under this section notwithstanding any other  
 14 provision of this code.

**§61-3-20. Embezzlement; Casting away, destroying, or interfering with floating craft or material; penalty.**

1 ~~If any officer, agent, clerk or servant of this state, or of any county, district, school district~~  
 2 ~~or municipal corporation, or of any banking institution, or other corporation, or any officer of public~~  
 3 ~~trust in this state, or any agent, clerk or servant of any firm or person, or company or association~~  
 4 ~~of persons not incorporated, embezzles or fraudulently converts to his or her own use, bullion,~~  
 5 ~~money, bank notes, drafts, security for money, or any effects or property of any other person,~~  
 6 ~~which shall have has come into his or her possession, or been placed under his or her care or~~  
 7 ~~management, by virtue of his or her office, place or employment, he or she shall be is guilty of the~~  
 8 ~~larceny thereof. If such the guilty person be is an officer, agent, clerk, or servant of any banking~~  
 9 ~~institution, he or she shall be is guilty of a felony and, upon conviction thereof, shall be imprisoned~~  
 10 ~~in the penitentiary a state correctional facility not less than 10 years. And it shall not be is not~~  
 11 ~~necessary to describe in the indictment, or to identify upon the trial, the particular bullion, money,~~  
 12 ~~bank note, draft or security for money which is so taken, converted to his or her own use or~~  
 13 ~~embezzled by him or her.~~

14 ~~And whenever any officer, agent, clerk, or servant of this state, or of any county, district,~~  
 15 ~~school district or municipal corporation, shall appropriate or uses for his or her own benefit, or~~  
 16 ~~for the benefit of any other person, any bullion, money, bank notes, drafts, security for money or~~  
 17 ~~funds belonging to this state or to any such county, district, school district or municipal corporation,~~  
 18 ~~he or she shall be held to have embezzled the same and be is guilty of the larceny thereof. In the~~  
 19 ~~prosecution of any such officer, agent, clerk or servant of this state or of any county, district,~~  
 20 ~~school district or municipal corporation charged with appropriation or use for his or her own benefit~~

21 ~~or the benefit of any other person, any bullion, money, bank notes, drafts, security for money or~~  
 22 ~~funds belonging to this state or to any county, district, school district or municipal corporation, it~~  
 23 ~~shall not be is not necessary to describe in the indictment, or to identify upon the trial, the particular~~  
 24 ~~bullion, money, bank notes, drafts, security for money or funds appropriated or used for his or her~~  
 25 ~~own benefit or for the benefit of any other person.~~

26 Any person who willfully casts away or otherwise destroys any vessel within any county  
 27 with intent to injure or defraud any owner thereof, or any owner of any property on board the  
 28 same, or insurer of such a vessel or property, or any part thereof, or, who takes, carries away,  
 29 removes, injures, destroys, breaks, cuts, detaches, unties, loosens, impairs, weakens, or  
 30 otherwise interferes with any rope, line, fastening, connecting or other appliance used to tie, moor,  
 31 attach or fasten to a bank of any stream, any floating craft, lumber, timber or material, which is  
 32 the property of another, with the intent to injure, defraud or damage such other person, or to cause  
 33 such floating craft, lumber, timber or material to become adrift, or to float away, without the  
 34 consent of the owner thereof, is guilty of a Class VI felony. If such act was committed without any  
 35 intent to injure, defraud, or damage such other person, that person is guilty of a Class I  
 36 misdemeanor.

**§61-3-20a. Embezzlement by misuse of power of attorney or other fiduciary relationship;  
 penalty.**

1 [Repealed.]

**§61-3-21. ~~Embezzlement by carrier or other person;~~ Interference with or destruction of  
 buoys, signal lights or other aids to navigation; penalty.**

1 ~~If any carrier or other person to whom money or other property which may be the subject~~  
 2 ~~of larceny may be delivered to be carried for hire, or if any other person who may be intrusted~~  
 3 ~~with such property, embezzle or fraudulently convert to his or her own use, or secrete with intent~~  
 4 ~~to do so, any such property, either in mass or otherwise, before delivery thereof at the place at~~  
 5 ~~which, or to the person to whom, they were to be delivered, he or she shall be deemed guilty of~~

6 ~~the larceny thereof.~~

7 Any person or persons, who willfully or maliciously interferes with, injures, or destroys any  
 8 buoy, lamp, lantern, signal light or other aid to navigation erected or maintained by the government  
 9 of this state, or of the United States, in this state, every person so offending guilty of a Class I  
 10 misdemeanor. If the violation causes bodily injury or death, every person so offending is guilty of  
 11 a Class VI felony.

**§61-3-22. Falsifying accounts; penalty; Malicious killing of animals by poison or otherwise; penalty.**

1 ~~If any officer, clerk or agent of this state, or of any county, district, school district or~~  
 2 ~~municipal corporation thereof, or of any banking institution or incorporated company, or any clerk~~  
 3 ~~or agent of any firm or person or association of persons not incorporated, make, alter or omit to~~  
 4 ~~make any entry in any book of account of, or in any account kept by such state, county, district,~~  
 5 ~~school district, municipal corporation, banking institution, incorporated company, firm or person,~~  
 6 ~~or association of persons, or mutilate, destroy or conceal any such account or book of accounts,~~  
 7 ~~with intent in so doing to conceal, the true state of any account, or to defraud the state or any~~  
 8 ~~county, district, school district, municipal corporation, banking institution, company, firm or person,~~  
 9 ~~or with intent to enable or assist any person to obtain money to which he or she was not entitled,~~  
 10 ~~such officer, clerk or agent shall be guilty of a felony, and, upon conviction, shall be confined in~~  
 11 ~~the penitentiary not less than one nor more than ten years.~~

12 Any person who maliciously administers poison to or exposes poison with the intent that  
 13 it should be taken by, any horse, cow or other animal of another person, or any person who  
 14 maliciously maims, kills, or causes the death of any horse, cow or other animal of another person,  
 15 is guilty of a Class VI felony: *Provided*, That this section may not be construed to include dogs.

**§61-3-22a. Possession or use of automated sales suppression devices; penalty**

1 [Repealed.]

**§61-3-23. Destroying or concealing will; embezzlement by fiduciary; penalty. Removal out**

**of county of property securing claim; penalties; fraudulent disposition of personal property in possession by virtue of lease; notice to return; failure to return; penalty; right to immediate possession.**

1       ~~If any person fraudulently destroy or conceal any will or codicil, with intent to prevent the~~  
2 ~~probate thereof, he or she shall be guilty of a felony, and, upon conviction, be confined in the~~  
3 ~~penitentiary not less than one nor more than five years. If any guardian, personal representative,~~  
4 ~~or other fiduciary, shall wilfully and knowingly fail to make and return an inventory of any personal~~  
5 ~~property (of which an inventory is required by law to be made) which may come to his or her~~  
6 ~~hands as such, or wilfully and knowingly fail or refuse to produce any such property for~~  
7 ~~appraisement in the manner required by law, or wilfully and knowingly conceal or embezzle any~~  
8 ~~such property, he or she shall be guilty of the larceny thereof; and the failure of any such guardian,~~  
9 ~~personal representative or other fiduciary to account for and pay over or deliver, when directed~~  
10 ~~by the court, as required by law, any money, bullion, bank notes or other property, determined by~~  
11 ~~the proper officer of court to be due and payable, shall be prima facie evidence that such guardian,~~  
12 ~~personal representative or other fiduciary has embezzled the same~~

13       (a) Any debtor under any security instrument conveying personal property, who retains  
14 possession of such personal property, and who, without the consent of the owner of the claim  
15 secured by the security instrument, and with intent to defraud, removes or causes to be removed  
16 any of the property securing the claim out of the county where it is situated at the time it became  
17 security for such claim or out of a county to which it was removed by virtue of a former consent of  
18 the owner of the claim under this section, or, with intent to defraud, secretes or sells the same, or  
19 converts the same to his or her own use, is guilty of a Class II misdemeanor.

20       (b) Any person in possession or control of any personal property by virtue of or subject to  
21 a written lease who, with intent to defraud and without written consent of the owner, disposes of  
22 such property by sale or transfer, or, after receiving a written notice to return the property or  
23 otherwise make the property available to the lessor, secretes or converts such property to his or

24 her own use and in so doing places the property in a location other than the locations described  
 25 in the written lease, or removes or causes to be removed such property from the state is guilty of  
 26 the larceny of the value of such property.

27 In any prosecution under the provisions of this subsection, written notice may be mailed  
 28 by certified mail, addressed to the consumer at the address of the consumer stated in the lease,  
 29 and served on the consumer within 10 days of the expiration of the lease, which notice shall state  
 30 that the lease has expired, and that the consumer has 10 days from receipt of the notice to return  
 31 the leased property. Proof that the consumer failed to return the property within 10 days of  
 32 receiving the notice shall constitute prima facie evidence, in any prosecution under this  
 33 subsection, that the consumer intended to defraud the owner.

34 Whenever the consumer is a resident of the county in which the lease was contracted, the  
 35 dealer, after written notice to the consumer within 10 days after the expiration of the lease, may  
 36 obtain immediate possession of the leased property without formal process, if this can be done  
 37 without breach of the peace. The dealer is not liable to the consumer for any damages for any  
 38 action taken that is reasonable, necessary, and incidental to the reclaiming or taking possession  
 39 of the leased property.

**§61-3-24. Obtaining money, property, and services by false pretenses; disposing of  
 property to defraud creditors; penalties; False statement as to financial condition  
 of person, firm, or corporation; penalty.**

1 ~~(a)(1) If a person obtains from another by any false pretense, token or representation, with~~  
 2 ~~intent to defraud, any money, goods or other property which may be the subject of larceny; or~~

3 ~~(2) If a person obtains on credit from another any money, goods or other property which~~  
 4 ~~may be the subject of larceny, by representing that there is money due him or her or to become~~  
 5 ~~due him or her, and assigns the claim for such money, in writing, to the person from whom he or~~  
 6 ~~she obtains such money, goods or other property, and afterwards collects the money due or to~~  
 7 ~~become due, without the consent of the assignee, and with the intent to defraud;~~

8           ~~(3) Such person is guilty of larceny. If the value of the money, goods or other property is~~  
9           ~~\$1,000 or more, such person is guilty of a felony, and, upon conviction thereof, shall be imprisoned~~  
10           ~~in the penitentiary not less than one year nor more than ten years, or, in the discretion of the court,~~  
11           ~~be confined in jail not more than one year and be fined not more than \$2,500. If the value of the~~  
12           ~~money, goods or other property is less than \$1,000, such person is guilty of a misdemeanor, and,~~  
13           ~~upon conviction thereof, shall be confined in jail not more than one year or fined not more than~~  
14           ~~\$2,500, or both.~~

15           ~~(b) If a person obtains by any false pretense, token or representation, with intent to~~  
16           ~~defraud, the signature of another to a writing, the false making of which would be forgery, the~~  
17           ~~person is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary~~  
18           ~~not less than one year nor more than five years, or, in the discretion of the court, be confined in~~  
19           ~~jail not more than one year and fined not more than \$2,500.~~

20           ~~(c)(1) If a person removes any of his or her property out of any county with the intent to~~  
21           ~~prevent the same from being levied upon by any execution; or~~

22           ~~(2) If a person secretes, assigns or conveys, or otherwise disposes of any of his or her~~  
23           ~~property with the intent to defraud any creditor or to prevent the property from being made liable~~  
24           ~~for payment of debts; or~~

25           ~~(3) If a person receives the property of another with the intent to defraud any creditor or to~~  
26           ~~prevent the property from being made liable for the payment of debts;~~

27           ~~(4) The person is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not~~  
28           ~~more than \$2,500 and be confined in jail not more than one year.~~

29           ~~(d) If a person, firm or corporation obtains labor, services or any other such thing of value~~  
30           ~~from another by any false pretense, token or representation, with intent to defraud, the person,~~  
31           ~~firm or corporation is guilty of theft of services. If the value of the labor, services or any other such~~  
32           ~~thing of value is \$1,000 or more, the person, firm or corporation is guilty of a felony, and, upon~~  
33           ~~conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than~~

34 ~~ten years, or, in the discretion of the court, be confined in jail not more than one year and be fined~~  
35 ~~not more than \$2,500. If the value of the labor, services or any other such thing of value is less~~  
36 ~~than \$1,000, the person, firm or corporation is guilty of a misdemeanor, and, upon conviction~~  
37 ~~thereof, shall be confined in jail not more than one year or fined not more than \$2,500, or both, in~~  
38 ~~the discretion of the court.~~

39 ~~(e) Theft of services includes the obtaining of a stop payment order on a check, draft or~~  
40 ~~order for payment of money owed for services performed in good faith and in substantial~~  
41 ~~compliance with a written or oral contract for services, with the fraudulent intent to permanently~~  
42 ~~deprive the provider of such labor, services or other such thing of value of the payment~~  
43 ~~represented by such check, draft or order. Notwithstanding the penalties set forth elsewhere in~~  
44 ~~this section, any person, firm or corporation violating the provisions of this subsection is guilty of~~  
45 ~~a misdemeanor, and, upon conviction thereof, shall be fined not more than two times the face~~  
46 ~~value of the check, draft or order.~~

47 ~~(f) Prosecution for an offense under this section does not bar or otherwise affect adversely~~  
48 ~~any right or liability to damages, forfeiture or other civil remedy arising from any or all elements of~~  
49 ~~the criminal offense.~~

50 Any person who knowingly makes or causes to be made, either directly or indirectly, or  
51 through any agency whatever, any false statement in writing, with intent that it shall be relied  
52 upon, respecting the financial condition, or means or ability to pay, of himself or herself, or any  
53 other person, firm or corporation, in whom or in which he or she is interested, or for whom or for  
54 which he or she is acting, for the purpose of procuring in any form whatever, either the delivery of  
55 personal property, the payment of cash, the making of a loan or credit, the extension of a credit,  
56 the discount of an account receivable, or the making, acceptance, discount, sale or indorsement  
57 of a bill of exchange, or promissory note, for the benefit either of himself or herself or of such  
58 person, firm or corporation; or who, knowing that a false statement in writing has been made,  
59 respecting the financial condition or means or ability to pay, of himself or herself, or such person,

60 firm or corporation in which he or she is interested, or for whom he or she is acting, procures,  
61 upon the faith thereof, for the benefit either of himself or herself, or of such person, firm or  
62 corporation, either or any of the things of benefit mentioned herein; or who, knowing that a  
63 statement in writing has been made, respecting the financial condition or means or ability to pay  
64 of himself or herself or such person, firm or corporation in which he or she is interested, or for  
65 whom he or she is acting, represents on a later day, either orally or in writing, that such statement  
66 theretofore made, if then again made on such day, would be then true, when in fact such  
67 statement, if then made, would be false, and procures upon the faith thereof, for the benefit either  
68 of himself or herself or of such other person, firm or corporation, either or any of the things of  
69 benefit mentioned herein, is guilty of a Class III misdemeanor.

**§61-3-24a. Attempted or fraudulent use, forgery, traffic of credit cards; possession and transfer of credit cards and credit card making equipment; false or fraudulent use of telephonic services; penalties.**

1 [Repealed.]

**§61-3-24b. Making, selling, possessing, transferring, or advertising for sale a device or plans for a device designed to obtain or use telephone or telegraph service or facilities by false or fraudulent means; penalty.**

1 [Repealed.]

**§61-3-24c. Intercepting or monitoring customer telephone calls; penalty.**

1 [Repealed.]

**§61-3-24d. Fraudulent schemes; cumulation of amounts where common scheme exists; penalties.**

1 [Repealed.]

**§61-3-24e. Omission to subscribe for workers' compensation insurance; failure to file a premium tax report or pay premium taxes; false testimony or statements; failure to file reports; penalties; asset forfeiture; venue.**

1 [Repealed.]

**§61-3-24f. Wrongfully seeking workers' compensation; false testimony or statements; penalties; venue.**

1 [Repealed.]

**§61-3-24g. Workers' compensation health care offenses; fraud; theft or embezzlement; false statements; penalties; notice; prohibition against providing future services; penalties; asset forfeiture; venue.**

1 [Repealed.]

**§61-3-24h. Providing false documentation to workers' compensation, to the Insurance Commissioner or a private carrier of workers' compensation insurance; altering documents or certificates from workers' compensation; penalties; venue.**

1 [Repealed.]

**§61-3-25. Casting away, destroying, or interfering with floating craft or material; penalty; Publication of false advertisements; penalty.**

1 ~~If any person wilfully cast away or otherwise destroy any vessel within any county with~~  
2 ~~intent to injure or defraud any owner thereof, or any owner of any property on board the same, or~~  
3 ~~insurer of such a vessel or property, or any part thereof, he or she shall be deemed guilty of a~~  
4 ~~felony, and, upon conviction thereof, shall be confined in the penitentiary of this state not less~~  
5 ~~than one nor more than five years; or, if any person take, carry away, remove, injure, destroy,~~  
6 ~~break, cut, detach, untie, loosen, impair, weaken, or otherwise interfere with any rope, line,~~  
7 ~~fastening, connecting or other appliance used to tie, moor, attach or fasten to a bank of any~~  
8 ~~stream, any floating craft, lumber, timber or material, the property of another, with intent to injure,~~  
9 ~~defraud or damage such other person, or to cause such floating craft, lumber, timber or material~~  
10 ~~to become adrift, or to float away, without the consent of the owner thereof, he or she shall be~~  
11 ~~deemed guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary of~~  
12 ~~this state not less than one nor more than five years.~~

13 Any person, firm, corporation or association, or their agents or employees, who, with intent  
 14 to sell, or in anywise dispose of, merchandise, securities, service, or anything offered by such  
 15 person, firm, corporation or association, directly or indirectly, to the public for sale or distribution,  
 16 or with intent to increase the consumption thereof, or to induce the public in any manner to enter  
 17 into any obligation relating thereto, or to acquire title thereto, or an interest therein, causes, directly  
 18 or indirectly, to be made, published, disseminated, circulated or placed before the public, in this  
 19 state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill,  
 20 circular, pamphlet or letter, or over any radio station, or in any other way, an advertisement of any  
 21 sort regarding merchandise, securities, service or anything so offered to the public, which  
 22 advertisement contains any assertion, representation or statement of fact which is untrue and  
 23 deceptive, is guilty of a petty offense, and, upon conviction thereof shall be punished by a fine of  
 24 not less than \$100 nor more than \$300, and such violation, by an agent or employee, is an offense  
 25 as well by the principal or employer, and they may be indicted for the same, either jointly or  
 26 severally.

**~~§61-3-26. Interference with or destruction of buoys, signal lights or other aids to navigation; penalty~~ Fraudulently obtaining food or lodging; penalty.**

1 ~~If any person or persons shall wilfully or maliciously interfere with, injure or destroy any~~  
 2 ~~buoy, lamp, lantern, signal light or other aid to navigation erected or maintained by the government~~  
 3 ~~of this state, or of the United States, in this state, every person so offending shall be guilty of a~~  
 4 ~~misdemeanor, and, upon conviction, be punished by a fine not exceeding \$500, or by~~  
 5 ~~imprisonment in the jail of the county not exceeding six months, or both, according to the~~  
 6 ~~aggravation of the offense, in the discretion of the court.~~

7 Any person who receives or causes to be furnished any food or accommodation at any  
 8 hotel, inn, eating, lodging or boardinghouse, or restaurant, with intent to defraud the owner or  
 9 keeper of such hotel, inn, eating, lodging or boardinghouse, or restaurant, and any person who  
 10 obtains credit at any hotel, inn, eating, lodging or boardinghouse, or restaurant, by the use of any

11 false pretense or device, or by depositing in such hotel, inn, eating, lodging or boardinghouse, or  
 12 restaurant, any baggage or property of less value than the amount of such credit, or of the bill by  
 13 such person incurred, with such fraudulent intent, and any person who, after obtaining credit or  
 14 accommodation at any hotel, inn, eating, lodging or boardinghouse, or restaurant, absconds from  
 15 such hotel, inn, eating, lodging or boardinghouse, or restaurant, or removes or attempts to remove  
 16 therefrom any baggage or personal property of any kind subject to the lien provided for in §38-  
 17 11-5 of this code, with intent to defraud the owner or keeper of such hotel, inn, eating, lodging or  
 18 boardinghouse, or restaurant, without first having paid, satisfied or arranged all claims or bills for  
 19 lodging, entertainment or accommodation, is guilty of a petty offense, and, upon conviction  
 20 thereof, shall be fined not more than \$300. For a second or subsequent offense within five years  
 21 of another offense under this section, that person is guilty of a Class II misdemeanor.

**§61-3-27. Malicious killing of animals by poison or otherwise; penalty. Intoxication of person in charge of locomotive engine or car; penalties.**

1 ~~If a person maliciously administers poison to, or exposes poison with the intent that it~~  
 2 ~~should be taken by, any horse, cow or other animal of another person, or if any person maliciously~~  
 3 ~~maims, kills, or causes the death of any horse, cow or other animal of another person, of the value~~  
 4 ~~of \$100 or more, the person is guilty of a felony, and, upon conviction, shall be imprisoned in the~~  
 5 ~~penitentiary not less than one year nor more than ten years; and, if the horse, cow or other animal~~  
 6 ~~is of less value than \$100, the person is guilty of a misdemeanor, and, upon conviction, shall be~~  
 7 ~~confined in jail not more than three months and fined not more than \$500: *Provided*, That this~~  
 8 ~~section shall not be construed to include dogs. Any person who, while in charge of a locomotive~~  
 9 ~~engine, whether the same be driven by steam, electricity or other motive power, running upon the~~  
 10 ~~railroad or traction lines of any corporation, or while acting as conductor or brakeman of any car~~  
 11 ~~or train of cars on such railroad or traction line, is intoxicated, is guilty of a Class I misdemeanor;~~  
 12 ~~and for the second offense is guilty of a Class VI felony.~~

**§61-3-28. Offenses against railroad property and persons on railroad property; definitions.**

**Jumping on or off car or train in motion; driving vehicle upon track or bridge except at crossings; penalty.**

1 (a) As used in this section:

2 (1) ~~"Bodily injury" means substantial physical pain, illness or any impairment of physical~~  
3 ~~injury.~~

4 (2) ~~"Railroad" means any form of nonhighway ground transportation that runs on rails or~~  
5 ~~electromagnetic guideways, including:~~

6 (i) ~~Commuter or other short-haul railroad passenger service in a metropolitan or suburban~~  
7 ~~area; and~~

8 (ii) ~~High-speed ground transportation systems that connect metropolitan areas but does~~  
9 ~~not include rapid transit operations in an urban area that are not connected to the general railroad~~  
10 ~~system of transportation;~~

11 (3) ~~"Railroad carrier" means a person providing railroad transportation; railroad carrier~~  
12 ~~including a right-of-way, track, bridge, yard, shop, station, tunnel, viaduct, trestle, depot,~~  
13 ~~warehouse, terminal, railroad signal system, train control system, centralized dispatching system,~~  
14 ~~or any other structure, appurtenance, or equipment owned, leased, or used in the operation of~~  
15 ~~any railroad carrier including a train, locomotive, engine, railroad car, work equipment, rolling~~  
16 ~~stock, or safety device. "Railroad property" does not include administrative buildings,~~  
17 ~~administrative offices, or administrative office equipment;~~

18 (4) ~~"Right-of-way" means the track or roadbed owned, leased, or operated by a railroad~~  
19 ~~carrier which is located on either side of its tracks and which is readily recognizable to a~~  
20 ~~reasonable person as being railroad property or is reasonably identified as such by fencing or~~  
21 ~~appropriate signs;~~

22 (5) ~~"Yard" means a system of parallel tracks, crossovers, and switches where railroad cars~~  
23 ~~are switched and made up into trains, and where railroad cars, locomotives and other rolling stock~~  
24 ~~are kept when not in use or when awaiting repairs.~~

25 ~~(b) Whoever willfully damages or attempts to damage railroad property or willfully~~  
26 ~~endangers or attempts to endanger the safety of another, by:~~

27 ~~(1) Taking, removing, altering, or otherwise vandalizing a railroad sign, placard or marker;~~

28 ~~(2) Throwing or dropping an object capable of causing significant damage to railroad~~  
29 ~~property at or on a locomotive, railroad car or train;~~

30 ~~(3) Shooting a firearm or other dangerous weapon at a locomotive, railroad car or train;~~

31 ~~(4) Removing appurtenances from, damaging, or otherwise impairing the operation of any~~  
32 ~~railroad signal system, including a train control system, centralized dispatching system, or~~  
33 ~~highway-railroad grade crossing warning signal, on a railroad owned, leased, or operated by any~~  
34 ~~railroad carrier, and without consent of the railroad carrier involved;~~

35 ~~(5) Interfering or tampering with, or obstructing in any way, or threatening to interfere with,~~  
36 ~~tamper with or obstruct in any way any railcar or locomotive, switch, frog, rail, roadbed, sleeper,~~  
37 ~~viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected~~  
38 ~~with any railroad carrier without consent of the railroad carrier involved; or~~

39 ~~(6) Taking, stealing, removing, changing, adding to, altering, or in any manner interfering~~  
40 ~~with any part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose,~~  
41 ~~or motor car used or capable of being used by any railroad carrier in this state without consent of~~  
42 ~~the railroad carrier is guilty of a felony.~~

43 ~~If railroad property damage does not exceed \$1,000 and no bodily injury occurs to another~~  
44 ~~as a result of any of the aforesaid acts, upon conviction thereof, the person shall be fined not less~~  
45 ~~than \$500 nor more than \$5,000, confined in a regional jail for not more than one year, or both. If~~  
46 ~~bodily injury occurs to another not acting with or in connection with the perpetrator as a result of~~  
47 ~~any of the aforesaid acts or if railroad property damage exceeds \$1,000, upon conviction thereof,~~  
48 ~~the person shall be fined not less \$1,000 nor more than \$10,000, committed to the custody of the~~  
49 ~~Commission of Corrections for not less than one nor more than ten years, or both.~~

50 ~~(d) The provisions of this section do not apply to any person employed by a railroad who~~

51 is performing the duties assigned by the railroad or who is otherwise performing within the scope  
 52 of his or her employment. Any person, not a passenger or employee, who is found trespassing  
 53 upon any railroad or traction car or train of any railroad in this state, by jumping on or off any car  
 54 or train in motion, on its arrival at or departure from any station or depot of such railroad, or on  
 55 the passage of any such car or train over any part of such railroad; or shall drive any horse or any  
 56 horse-drawn or motor-driven vehicle across or upon any railroad track or bridge, except at public,  
 57 private or farm crossings, such person so offending is guilty of a Class III misdemeanor.

**~~§61-3-29. Damage or destruction of railroad or public utility company property, or real or  
 personal property used for producing, generating, transmitting, distributing,  
 treating or collecting electricity, natural gas, coal, water, wastewater, stormwater,  
 telecommunications or cable service; penalties; restitution. Procuring gas, water  
 or electricity, by device, with intent to defraud; penalty.~~**

1 (a) ~~Any person who knowingly and willfully damages or destroys any commercial or~~  
 2 ~~industrial real or personal property owned by a railroad company, or public utility company, or any~~  
 3 ~~real or personal property used for producing, generating, transmitting, distributing, treating storing~~  
 4 ~~or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater,~~  
 5 ~~stormwater, telecommunications or cable service, is guilty of a misdemeanor and, upon conviction~~  
 6 ~~thereof, shall be fined not more than \$2,000, or confined in jail not more than one year, or both~~  
 7 ~~fined and confined.~~

8 (b) ~~Any person who knowingly and willfully damages or destroys any commercial or~~  
 9 ~~industrial real or personal property owned by a railroad company, or public utility company, or any~~  
 10 ~~real or personal property used for producing, generating, transmitting, distributing, treating, storing~~  
 11 ~~or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater,~~  
 12 ~~stormwater, telecommunications or cable service and thereby creates a substantial risk of serious~~  
 13 ~~bodily injury to another or results in the interruption of service to the public is guilty of a felony~~  
 14 ~~and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned in a state~~

15 ~~correctional facility not less than one nor more than three years, or both fined and imprisoned.~~

16 ~~(c) Any person who knowingly and willfully damages or destroys any commercial or~~  
17 ~~industrial real or personal property owned by a railroad company, or public utility company, or any~~  
18 ~~real or personal property used for producing, generating, transmitting, distributing, treating, storing~~  
19 ~~or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater,~~  
20 ~~stormwater, telecommunications or cable service and thereby causes serious bodily injury to~~  
21 ~~another is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor~~  
22 ~~more than \$50,000, or imprisoned in a state correctional facility not less than one nor more than~~  
23 ~~five years, or both fined and imprisoned.~~

24 ~~(d) Any person who knowingly and willfully damages or destroys any commercial or~~  
25 ~~industrial real or personal property owned by a railroad company, or public utility company, or any~~  
26 ~~real or personal property used for producing, generating, transmitting, distributing, treating, storing~~  
27 ~~or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater,~~  
28 ~~stormwater, telecommunications or cable service and thereby hinders, impairs or disrupts, directly~~  
29 ~~or indirectly, the normal operation of any equipment, device, system or service put in place, in~~  
30 ~~whole or in part, to protect, promote or facilitate the health or safety of any person is guilty of a~~  
31 ~~felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000,~~  
32 ~~or imprisoned in a state correctional facility for not less than one nor more than five years, or both~~  
33 ~~fined and imprisoned.~~

34 ~~(e) For purposes of restitution under article eleven-a of this article, a railroad company,~~  
35 ~~public utility, business, or owner of property that is damaged, destroyed or disrupted may be~~  
36 ~~deemed a victim and entitled to restitution, should the court so order, from any person convicted~~  
37 ~~of an offense under this section.~~

38 ~~(f) Nothing in this section limits or restricts the ability of an entity referred to in subsection~~  
39 ~~(a), (b), (c) or (d) of this section or a property owner or other person who has been damaged or~~  
40 ~~injured as a result of a violation of this section from seeking recovery for damages arising from~~

41 ~~violation of this section.~~

42 Any person who, with intent to injure or defraud, procures, makes, or causes to be made,  
43 any pipe, tube, wire, or other conductor of gas, water or electric energy, and connects the same,  
44 or causes it to be connected, with any main, service pipe or other pipe for conducting or supplying  
45 gas, or water, or any wires or other conductor of electric energy, in such manner as to supply gas,  
46 water or electric energy to any lamp, motor, burner, orifice, or any other device, by or at which  
47 gas, water or electric energy is consumed, around or without passing through the meter provided  
48 for measuring and registering the quantity of gas, water or electric energy consumed, or in any  
49 other manner so as to evade payment therefor, and every person who, with like intent, injures or  
50 alters any gas, water or electric meter, or obstructs its action, is guilty of a Class II misdemeanor.

**~~§61-3-30. Removal, injury to or destruction of property, monuments designating land~~**  
**~~boundaries and of certain no trespassing signs; penalties. Dams or obstructions in~~**  
**~~watercourses; penalty.~~**

1 ~~(a) If any person unlawfully, but not feloniously, takes and carries away, or destroys,~~  
2 ~~injures or defaces any property, real or personal, of another, he or she is guilty of a misdemeanor~~  
3 ~~and, upon conviction thereof, shall be fined not more than \$500, or confined in the county or~~  
4 ~~regional jail not more than one year, or both fined and imprisoned.~~

5 ~~(b) Any person who unlawfully, willfully and intentionally destroys, injures or defaces the~~  
6 ~~real or personal property of one or more other persons or entities during the same act, series of~~  
7 ~~acts or course of conduct causing a loss in the value of the property in an amount of \$2,500 or~~  
8 ~~more, is guilty of the felony offense of destruction of property and, upon conviction thereof, shall~~  
9 ~~be fined not more than \$2,500 or imprisoned in the state correctional facility for not less than one~~  
10 ~~year nor more than ten years, or in the discretion of the court, confined in the county or regional~~  
11 ~~jail not more than one year, or both fined and imprisoned.~~

12 ~~(c) If any person breaks down, destroys, injures, defaces or removes any monument~~  
13 ~~erected for the purpose of designating the boundaries of a municipality, tract or lot of land, or any~~

14 ~~tree marked for that purpose, or any sign or notice upon private property designating no~~  
15 ~~trespassing upon the property, except signs or notices posted in accordance with the provisions~~  
16 ~~and purposes of sections seven, eight and ten, article two, chapter twenty of this code, he or she~~  
17 ~~is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$20 nor more~~  
18 ~~than \$200, or confined in the county or regional jail not less than one nor more than six months,~~  
19 ~~or both fined and imprisoned. Magistrates have concurrent jurisdiction of all offenses arising under~~  
20 ~~the provisions of this section. The provisions of this paragraph do not apply to the owner, or his~~  
21 ~~or her agent, of the lands on which such signs or notices are posted. No person may fell any~~  
22 ~~timber and permit the same to remain in any navigable or floatable stream of this state when to~~  
23 ~~do so obstructs the passage of boats, rafts, staves, ties, or timber of any kind.~~

24 Except as may be provided in Chapter 20 or Chapter 22 of this code, no person may  
25 construct or maintain any dam or other structure in any stream or watercourse, which in any way  
26 prevents or obstructs the free and easy passage of fish up or down such stream or watercourse,  
27 without first providing as a part of such dam or other structure a suitable fish ladder, way or flume,  
28 so constructed as to allow fish easily to ascend or descend the same; which ladder, way or flume  
29 shall be constructed only upon plans, in a manner, and at a place, satisfactory to the Division of  
30 Natural Resources: *Provided*, That if the director of the Division of Natural Resources determines  
31 that there is no substantial fish life in such stream or watercourse, or that the installation of a fish  
32 ladder, way or flume would not facilitate the free and easy passage of fish up or down a stream  
33 or watercourse, or that an industrial development project requires the construction of such dam  
34 or other structure and the installation of an operational fish ladder, way or flume is impracticable,  
35 the director may, in writing, permit the construction or maintenance of a dam or other structure in  
36 a stream or watercourse without providing a suitable fish ladder, way or flume; and in all navigable  
37 and floatable streams provisions shall be made in such dam or structure for the passage of boats  
38 and other crafts, logs and other materials: *Provided, however*, That this section does not relieve  
39 such person from liability for damage to any riparian owner on account of the construction or

40 maintenance of such dam.

41 Any person who violates any of the provisions of this section is guilty of a Class I  
 42 misdemeanor, and, whether a conviction is had under this section or not, such violation is a  
 43 nuisance, which may be abated at the suit of any citizen or taxpayer, the county commission of  
 44 the county, or, as to fish ladders, at the suit of the director of the Division of Natural Resources,  
 45 and, if the same endangers county roads, the county commission may abate such nuisance  
 46 peaceably without such suit.

**§61-3-31. ~~Damage to or destruction of property by bailee for hire or loan; penalty; damages recoverable in civil action.~~ Purchase of scrap metal by scrap metal purchasing businesses, salvage yards, or recycling facilities; certificates, records and reports of such purchases; criminal penalties.**

1 ~~If any bailee for hire or loan of any property shall wilfully, or with gross negligence, damage~~  
 2 ~~or destroy the property of any person, while the same is in the custody or possession of such~~  
 3 ~~bailee, he or she shall be deemed guilty of a misdemeanor, and, upon conviction shall be fined~~  
 4 ~~not exceeding \$100, or be imprisoned in the county jail for a term not exceeding thirty days, in the~~  
 5 ~~discretion of the court, and shall be liable to the owner or owners of such property for the value~~  
 6 ~~thereof, or the injury done to the same, in a civil action. (a) For the purposes of this section, the~~  
 7 ~~following terms have the following meanings.~~

8 “Business registration certificate” has the same meaning ascribed to it in section two,  
 9 article twelve, chapter eleven of this code.

10 “Purchaser” means any person in the business of purchasing scrap metal or used auto  
 11 parts, any salvage yard owner or operator, or any public or commercial recycling facility owner or  
 12 operator, or any agent or employee thereof, who purchases any form of scrap metal or used auto  
 13 parts.

14 “Scrap metal” means any form of copper, aluminum, brass, lead or other nonferrous metal  
 15 of any kind, a catalytic converter or any materials derived from a catalytic converter, or steel

16 railroad track and track material.

17 (b) In addition to any requirement necessary to do business in this state, a scrap metal  
18 dealer shall:

19 (1) Have a current valid business registration certificate from the Tax Commissioner;

20 (2) Register any scales used for weighing scrap metal with the Division of Labor Weights  
21 and Measures office;

22 (3) Provide a notice of recycling activity to the Department of Environmental Protection;  
23 and

24 (4) Register as a scrap metal dealer with the Secretary of State, who is hereby directed to  
25 maintain a list of scrap metal dealers and make it publicly available. The list shall include the  
26 dealer's business address, hours of operation, physical address, phone number, facsimile  
27 number, if any, and the name of the owners or principal officers of the business.

28 (c) Any purchaser of scrap metal shall make a record of such purchase that shall contain  
29 the following information for each transaction:

30 (1) The full name, permanent home and business addresses and telephone number, if  
31 available, of the seller;

32 (2) A description and the motor vehicle license number of any vehicle used to transport  
33 the purchased scrap metal to the place of purchase;

34 (3) The time and date of the transaction;

35 (4) A complete description of the kind, character and weight of the scrap metal purchased;

36 and

37 (5) A statement of whether the scrap metal was purchased, taken as collateral for a loan  
38 or taken on consignment.

39 (d) A purchaser also shall require and retain from the seller of the scrap metal the  
40 following:

41 (1) A signed certificate of ownership of the scrap metal being sold or a signed authorization

42 from the owner of the scrap metal to sell said scrap metal; and

43 (2) A photocopy of a valid driver's license or identification card issued by the West Virginia  
44 Division of Motor Vehicles of the person delivering the scrap metal, or in lieu thereof, any other  
45 valid photo identification of the seller issued by any other state or the federal government:  
46 Provided, That, if the purchaser has a copy of the seller's valid photo identification on file, the  
47 purchaser may reference the identification that is on file, without making a separate photocopy  
48 for each transaction.

49 (e) It is unlawful for any purchaser to purchase any scrap metal without obtaining and  
50 recording the information required under subsections (c) and (d) of this section. The provisions of  
51 this subsection do not apply to purchases made at wholesale under contract or as a result of a  
52 bidding process: Provided, That the purchaser retains and makes available for review consistent  
53 with subsection (g) of this section the contract, bill of sale or similar documentation of the purchase  
54 made at wholesale under contract or as a result of a bidding process: Provided, however, That  
55 the purchaser may redact any pricing or other commercially sensitive information from said  
56 contract, bill of sale or similar documentation before making it available for inspection.

57 (f) No purchaser of scrap metal may knowingly purchase or possess a stainless steel or  
58 aluminum beer keg, whether damaged or undamaged, or any reasonably recognizable part  
59 thereof, for the intended purpose of reselling as scrap metal unless the purchaser receives the  
60 keg or keg parts from the beer manufacturer or its authorized representative.

61 (g) Using a form provided by the West Virginia State Police, or his or her own form, a  
62 purchaser of scrap metal shall retain the records required by this section at his or her place of  
63 business for not less than three years after the date of the purchase. Upon completion of a  
64 purchase, the records required to be retained at a purchaser's place of business shall be available  
65 for inspection by any law-enforcement officer or, upon written request and during the purchaser's  
66 regular business hours, by any investigator employed by a public utility or railroad to investigate  
67 the theft of public utility or railroad property: Provided, That in lieu of the purchaser keeping the

68 records at their place of business, the purchaser shall file the records with the local detachment  
69 of the State Police and with the chief of police of the municipality or the sheriff of the county  
70 wherein he or she is transacting business within seventy-two hours of completion of the purchase.  
71 The records shall be retained by the State Police and the chief of police of the municipality or the  
72 sheriff for a period of not less than three years.

73 (h) To the extent otherwise permitted by law, any investigator employed by a public utility  
74 or railroad to investigate the theft of public utility or railroad property may accompany a law-  
75 enforcement officer upon the premises of a purchaser in the execution of a valid warrant or assist  
76 law enforcement in the review of records required to be retained pursuant to this section.

77 (i) Upon the entry of a final determination and order by a court of competent jurisdiction,  
78 scrap metal found to have been misappropriated, stolen, or taken under false pretenses may be  
79 returned to the proper owner of such material.

80 (j) Nothing in this section applies to scrap purchases by manufacturing facilities that melt,  
81 or otherwise alter the form of scrap metal and transform it into a new product or to the purchase  
82 or transportation of food and beverage containers or other nonindustrial materials having a  
83 marginal value per individual unit.

84 (k)(1) Nothing in this section applies to a purchaser of a vehicle on which a catalytic  
85 converter is installed, a purchaser of a catalytic converter intended for installation on a vehicle  
86 owned or leased by the purchaser, or any person who purchases, other than for purposes of  
87 resale, a catalytic converter, or a motor vehicle on which a catalytic converter is installed, for  
88 personal, family, household or business use.

89 (2) In transactions not exempted by subdivision (1) of this subsection, any person  
90 delivering five or more automobile catalytic converters to a scrap metal dealer shall, in addition to  
91 the requirements set forth in subsection (c) of this section, execute a document stating he or she  
92 is the lawful owner of the catalytic converters, or authorized by the lawful owner to sell the catalytic  
93 converters. Next to his or her signature he or she shall place a clear impression of his or her index

94 finger or thumb that is in ink and free of smearing. This documentation shall be maintained  
95 consistent with subsection (c) of this section.

96 (l) Any person who knowingly or with fraudulent intent violates any provision of this section  
97 for which no penalty is specifically set forth, including the knowing failure to make a report or the  
98 knowing falsification of any required information, is guilty of a Class III misdemeanor and, upon  
99 conviction, shall be fined as an enterprise; upon conviction of a second offense thereof, shall be  
100 guilty of a Class II misdemeanor and, upon conviction, shall be fined as an enterprise and,  
101 notwithstanding the provisions of section five, article twelve, chapter eleven of this code, the court  
102 in which the conviction occurred shall issue an order directing the Tax Commissioner to suspend  
103 for a period of six months any business registration certificate held by that person; and upon  
104 conviction of a third or subsequent offense thereof shall be guilty of a Class I misdemeanor and,  
105 upon conviction, shall be fined as an enterprise, and, notwithstanding the provisions of §11-12-5  
106 of this code, the court in which the conviction occurred shall issue an order directing the Tax  
107 Commissioner to cancel any business registration certificate held by that person and state the  
108 date said cancellation shall take effect.

109 (m) No person may have or take possession of any scrap metal that he or she knows, or  
110 has reason to know, has been stolen or unlawfully obtained. Any person violating this subsection  
111 is guilty of the larceny of the value thereof.

112 (n) No scrap metal dealer may purchase, possess, or receive scrap metal that the scrap  
113 metal dealer knows, or has reason to know, has been stolen or unlawfully obtained by the seller.  
114 Any person violating this subsection is guilty of the larceny of the value thereof.

115 (o) No scrap metal dealer may purchase, possess, or receive any of the following items of  
116 scrap metal, or any reasonably recognizable part thereof, without obtaining written documentation  
117 which reflects that the seller is authorized to possess and sell the item or items and that the seller  
118 is in lawful possession of the item of scrap metal:

119 (1) Utility access covers;

- 120 (2) Street light poles or fixtures;
- 121 (3) Road or bridge guard rails;
- 122 (4) Water meter covers;
- 123 (5) Highway or street signs;
- 124 (6) Traffic directional or traffic control signs;
- 125 (7) Traffic light signals;
- 126 (8) Any metal marked with any form of the name or initials of a governmental entity;
- 127 (9) Property marked as or readily identifiable as owned by a telephone, cable, electric,
- 128 water or other utility provider;
- 129 (10) Property owned and marked by a railroad;
- 130 (11) Cemetery markers or vases;
- 131 (12) Historical markers;
- 132 (13) Utility manhole covers and storm water grates; and
- 133 (14) Fire hydrant or fire hydrant caps; or
- 134 (15) Twisted pair copper telecommunications wiring of twenty-five pair or greater in 19,
- 135 22, 24 or 26 gauge.
- 136 (p) Nothing in this section prohibits a scrap dealer from purchasing or taking possession
- 137 of scrap metal knowing or have reason to know that it is stolen or obtained illegally if it is done
- 138 pursuant to a written agreement with law-enforcement officials.

**~~§61-3-32. Removal out of county of property securing claim; penalties; fraudulent disposition of personal property in possession by virtue of lease; notice to return; failure to return; penalty; right to immediate possession. Precious metals and gem dealers; records; prohibited acts.~~**

- 1 ~~(a) Any debtor under any security instrument conveying personal property, who retains~~
- 2 ~~possession of such personal property, and who, without the consent of the owner of the claim~~
- 3 ~~secured by such security instrument, and with intent to defraud, removes or causes to be removed~~

4 ~~any of the property securing such claim out of the county where it is situated at the time it became~~  
5 ~~security for such claim or out of a county to which it was removed by virtue of a former consent of~~  
6 ~~the owner of the claim under this section, or, with intent to defraud, secretes or sells the same, or~~  
7 ~~converts the same to his or her own use, shall be guilty of a misdemeanor, and, upon conviction~~  
8 ~~thereof, be fined not more than \$500, or imprisoned not more than six months, or both, in the~~  
9 ~~discretion of the court.~~

10 ~~(b) Any person in possession or control of any personal property by virtue of or subject to~~  
11 ~~a written lease who, with intent to defraud and without written consent of the owner, disposes of~~  
12 ~~such property by sale or transfer, or, after receiving a written notice to return the property or~~  
13 ~~otherwise make the property available to the lessor, secretes or converts such property to his or~~  
14 ~~her own use and in so doing places the property in a location other than the locations described~~  
15 ~~in the written lease, or removes or causes to be removed such property from the state shall be~~  
16 ~~deemed guilty of the larceny of such property.~~

17 ~~In any prosecution under the provisions of this subsection, written notice may be mailed~~  
18 ~~by certified mail, addressed to the consumer at the address of the consumer stated in the lease,~~  
19 ~~and served on the consumer within ten days of the expiration of the lease, which notice shall state~~  
20 ~~that the lease has expired and that consumer has ten days from receipt of such notice to return~~  
21 ~~the leased property. Proof that the consumer failed to return the property within ten days of~~  
22 ~~receiving such notice shall in any prosecution under this subsection constitute prima facie~~  
23 ~~evidence that the consumer intended to defraud the owner.~~

24 ~~Whenever the consumer is a resident of the county in which the lease was contracted, the~~  
25 ~~dealer, after written notice to the consumer within ten days after the expiration of the lease, has~~  
26 ~~the right to immediate possession of the leased property, without formal process to secure return~~  
27 ~~and possession of the leased property, if this can be done without breach of the peace. The dealer~~  
28 ~~is not liable to the consumer for any damages for any action taken that is reasonable, necessary~~  
29 ~~and incidental to the reclaiming or taking possession of the leased property. (a) Each person, firm,~~

30 or corporation in the business of purchasing precious metals or precious gems, or both, for any  
31 purpose other than personal, family or household use, is subject to the provisions of this section.  
32 Each such purchaser shall secure from the seller of the precious metal or precious gem sufficient  
33 proof of lawful ownership or an affidavit of ownership, the original of which shall be retained by  
34 the purchaser.

35 (b) Each such purchaser of a precious metal or precious gem shall truly and accurately  
36 list each purchase in a permanent record book clearly showing the kind, character and amount of  
37 metal or gem purchased, any special or unique quality or item of description concerning the metal  
38 or gem purchased; the date of purchase, the full name and residence address and mailing  
39 address of the seller, and any telephone number of the seller. Such record book shall be open to  
40 inspection by any law-enforcement officer in this state during normal business hours of the  
41 purchaser. If any such purchase is made within a municipality, the purchaser shall report all the  
42 information required by this section in writing to the chief of the police department of the  
43 municipality within 24 hours of the purchase. If any such purchase is made outside of a  
44 municipality, the purchaser shall report all the information required by this section in writing to the  
45 sheriff of the county wherein the purchase was made within 24 hours of the purchase. The  
46 information required by this section shall be preserved for a period of not less than three years.

47 (c) Each such purchaser of a precious metal or precious gem may not, for a period of 10  
48 calendar days after the purchase, dispose of such metal or gem, remove such metal or gem from  
49 the state or alter in any way the form or substance of such metal or gem.

50 (d) As used in this section, "precious metal" means any gold, silver, platinum, or other  
51 valuable metal; and "precious gem" means any diamond, pearl, emerald, ruby, sapphire or similar  
52 precious stone.

53 (e) Any person, firm or corporation violating any provision of this section is guilty of a  
54 Class VI felony.

**§61-3-33. Entry upon enclosed lands; penalty; liability for damages. Unauthorized use of**

**dumpsters; penalties.**

1           ~~If any person shall, without the consent of the owner or occupier thereof, enter upon the~~  
2 ~~enclosed lands of another and do any damage, or shall, without such consent, pull down in whole~~  
3 ~~or in part, or injure, any fence of another, or without permission open and leave open the gate or~~  
4 ~~drawbar of another, or enter upon the enclosed lands of another after being forbidden so to do,~~  
5 ~~or enter thereon and curse, or insult, or annoy, the owner thereof or any person rightfully there,~~  
6 ~~he or she shall be guilty of a misdemeanor, and, upon conviction, be fined not less than five nor~~  
7 ~~more than \$100; and, in default of the payment of the fine, the offender may, in the discretion of~~  
8 ~~the judge or justice, be committed to jail for not less than five days. He or she shall, moreover, be~~  
9 ~~liable to the party injured for the damages sustained by such injury; and it shall be no defense to~~  
10 ~~any prosecution or suit under this section, that such fence was not a lawful fence. (a) Any person~~  
11 ~~who without authorization, and for that person's own benefit, dumps garbage or trash, or assists~~  
12 ~~in the unauthorized dumping of garbage or trash, in a dumpster or other solid waste container~~  
13 ~~which is located on the property of another person and leased or otherwise owned or maintained~~  
14 ~~by another person is guilty of a misdemeanor and, upon conviction thereof, shall be punished in~~  
15 ~~accordance with subsection (b) of this section. The act of throwing isolated objects into a dumpster~~  
16 ~~or other solid waste container in the prevention or elimination of litter is specifically excepted from~~  
17 ~~any penalties under this section.~~

18           (b) Any person convicted of a misdemeanor under subsection (a) of this section shall be  
19 subject to the following penalties:

20           (1) Upon a first conviction under this section, the defendant shall be convicted of a petty  
21 offense and fined not less than \$50 nor more than \$200.

22           (2) Upon a second conviction under this section, the defendant shall be convicted of a  
23 petty offense and fined not less than \$200 nor more than \$300.

24           (3) Upon any subsequent conviction in excess of a second conviction under this section,  
25 the defendant shall be guilty of a Class III misdemeanor.

26 Notwithstanding the provisions of §61-11A-4 of this code or §50-3-2a of this code, the  
 27 magistrate or court may order restitution not to exceed the value of unauthorized solid waste  
 28 services received.

**~~§61-3-34. Taking or injuring garden or field crops; penalties.~~ Identity theft; penalty.**

1 ~~If a person enters the orchard, field, garden or market garden of another person, without~~  
 2 ~~the consent of the owner or occupier thereof, and does any damage to the fruit, vegetables, grain~~  
 3 ~~or grass growing or being thereon, or takes, carries away, injures or destroys any of the grain,~~  
 4 ~~fruit, grass or vegetables growing or being thereon, the person is guilty of a misdemeanor, and,~~  
 5 ~~upon conviction, shall be fined not more than \$500, or confined in jail not exceeding six months,~~  
 6 ~~or both. If a person commits any of the acts mentioned herein, and if it is charged in the indictment~~  
 7 ~~or information and proved that the property injured or destroyed, or taken or carried away, is of a~~  
 8 ~~greater value than \$1,000, the person is guilty of a felony, and, upon conviction, shall be~~  
 9 ~~imprisoned in the penitentiary not less than one year nor more than ten years, or, in the discretion~~  
 10 ~~of the court, be confined in jail not more than one year and fined not less than fifty nor more than~~  
 11 ~~\$2,500. Any person who knowingly takes the name, birth date, social security number, or other~~  
 12 ~~identifying information of another person, without the consent of that other person, with the intent~~  
 13 ~~to fraudulently represent that he or she is the other person for the purpose of making financial or~~  
 14 ~~credit transactions in the other person's name, or for the purpose of gaining employment, is guilty~~  
 15 ~~of a Class VI felony and, upon conviction, shall be liable to the owner in the amount of three times~~  
 16 ~~the value of all damages provable resulting from such identity theft: *Provided*, That the provisions~~  
 17 ~~of this section do not apply to any person who obtains another person's drivers license or other~~  
 18 ~~form of identification for the sole purpose of misrepresenting his or her age.~~

**~~§61-3-35. Digging cultivated ginseng; penalty.~~ Failure to pay for gasoline.**

1 ~~(a) It shall be unlawful for any person to dig cultivated ginseng or prospect for the same,~~  
 2 ~~on the lands of another without written consent of the owner or owners thereof first obtained. The~~  
 3 ~~property must be properly posted with "No Trespassing" signs, "Private Property" signs, or other~~

4 ~~signs that explain to a person to stay off the property. The signs must be of reasonable size to be~~  
5 ~~read by an average person and must be posted at reasonable intervals of at least two hundred~~  
6 ~~feet around the property.~~

7 (b) ~~Any person violating this section shall be guilty of a misdemeanor and, upon conviction~~  
8 ~~thereof, shall be fined not less than \$500 nor more than \$1,000, and, for each subsequent offense,~~  
9 ~~shall be fined not less than \$1,000.~~

1 Any person who knowingly and willfully drives a motor vehicle off the premises of an  
2 establishment where gasoline offered for retail sale was dispensed into the fuel tank of the motor  
3 vehicle with the intent to avoid payment for the gasoline that was so dispensed is guilty of the  
4 larceny thereof. In addition to the penalties provided for by §61-3-13 of this code, upon a second  
5 conviction for larceny of gasoline, the court shall order the suspension of the person's license to  
6 drive a motor vehicle for six months, and upon a third or subsequent conviction, the court shall  
7 order the suspension of the person's license to drive a motor vehicle for one year.

8 Whenever a second or subsequent offense occurs under the provisions of this section,  
9 the clerk of the court shall transmit a certified abstract of the judgment to the Division of Motor  
10 Vehicles within 72 hours of the conviction. Upon receipt of the abstract of judgment the Division  
11 of Motor Vehicles shall enter an order suspending the person's license to operate a motor vehicle  
12 for the appropriate time period.

**§61-3-36. Anchoring or beaching shanty boats on lands of another; penalties. Scanning device or reencoder fraud; felony; definitions; and penalties.**

1 ~~If any person, being the owner or occupier of any shanty boat, or boat of like kind, who~~  
2 ~~anchors, ties or beaches such boat upon the real estate of another for a longer period than twelve~~  
3 ~~hours, except in case of distress, without the permission of the owner or agent of the owner of~~  
4 ~~such real estate, upon which such boat is anchored, tied or beached, he or she shall be guilty of~~  
5 ~~a misdemeanor, and, upon conviction, shall be fined not more than \$50, or confined in the county~~  
6 ~~jail not more than thirty days, in the discretion of the court. And each twelve hours that such owner~~

7 ~~or occupier, after having been notified to remove, allows such boat to remain at such place, or~~  
8 ~~anchored, tied or beached upon the premises of such owner, shall be treated as a separate~~  
9 ~~offense. And any such person having been notified to remove such boat, who shall, within thirty~~  
10 ~~days thereafter, gain anchor, tie or beach any boat upon the real estate of such owner, shall be~~  
11 ~~guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding \$50 and imprisoned~~  
12 ~~in the county jail not exceeding thirty days. Any justice of the peace in any county of the state~~  
13 ~~where such offense or offenses shall be committed shall have jurisdiction thereof. (a) As used in~~  
14 this section, the term:

15 “Authorized user” means the person to whom a payment card is issued or any other person  
16 acting with the permission of the person to whom the card is issued;

17 “Merchant” means an owner or operator of any retail mercantile establishment or any  
18 agent, employee, lessee, consignee, officer, director, franchisee or independent contractor of the  
19 owner or operator. A “merchant” also means a person who receives from an authorized user of a  
20 payment card, or someone the person believes to be an authorized user, a payment card or  
21 information from a payment card, or what the person believes to be a payment card or information  
22 from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services,  
23 money or anything else of value from the person;

24 “Payment card” means a credit card, charge card, debit card, hotel key card, stored value  
25 card or any other card that is issued to an authorized card user and that allows the user to obtain,  
26 purchase or receive goods, services, money, or anything else of value from a merchant;

27 “Reencoder” means an electronic device that places encoded information from the  
28 magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment  
29 card; and

30 “Scanning device” means a scanner, reader or any other electronic device that is used to  
31 access, read, scan, obtain, memorize or store, temporarily or permanently, information encoded  
32 on the magnetic strip or stripe of a payment card.

33 (b) Any person who uses a scanning device to access, read, obtain, memorize or store,  
34 temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card  
35 without the permission of the authorized user of the payment card and with the intent to defraud  
36 the authorized user, the issuer of the authorized user's payment card or a merchant is guilty of a  
37 misdemeanor and, upon conviction thereof, shall be fined not more than \$2,500 or confined in l  
38 jail for not more than one year, or both fined and confined.

39 (c) Any person who uses a reencoder to place information encoded on the magnetic strip  
40 or stripe of a payment card onto the magnetic strip or stripe of a different card without the  
41 permission of the authorized user of the card from which the information is being reencoded and  
42 with the intent to defraud the authorized user, the issuer of the authorized user's payment card or  
43 a merchant is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than  
44 \$2,500 or confined in jail not more than one year, or both fined and confined.

45 (d) Notwithstanding the provisions of subsections (b) and (c) of this section, any person  
46 who is convicted of the provisions of subsection (b) or (c) of this section who has previously been  
47 convicted of a violation of either subsection is guilty of a felony and, upon conviction, shall be  
48 imprisoned in a state correctional facility for not less than one nor more than three years or fined  
49 not more than \$5,000, or both fined and imprisoned.

**§61-3-37. False statement as to financial condition of person, firm or corporation; penalty.**

**Possession of bogus receipts or universal product codes with intent to defraud;**  
**penalties.**

1 ~~Any person who shall knowingly make or cause to be made, either directly or indirectly, or~~  
2 ~~through any agency whatsoever, any false statement in writing, with intent that it shall be relied~~  
3 ~~upon, respecting the financial condition, or means or ability to pay, of himself or herself, or any~~  
4 ~~other person, firm or corporation, in whom or in which he or she is interested, or for whom or for~~  
5 ~~which he or she is acting, for the purpose of procuring in any form whatsoever, either the delivery~~  
6 ~~of personal property, the payment of cash, the making of a loan or credit, the extension of a credit,~~

7 ~~the discount of an account receivable, or the making, acceptance, discount, sale or indorsement~~  
8 ~~of a bill of exchange, or promissory note, for the benefit either of himself or herself or of such~~  
9 ~~person, firm or corporation; or who, knowing that a false statement in writing has been made,~~  
10 ~~respecting the financial condition or means or ability to pay, of himself or herself, or such person,~~  
11 ~~firm or corporation in which he or she is interested, or for whom he or she is acting, procures,~~  
12 ~~upon the faith thereof, for the benefit either of himself or herself, or of such person, firm or~~  
13 ~~corporation, either or any of the things of benefit mentioned herein; or who, knowing that a~~  
14 ~~statement in writing has been made, respecting the financial condition or means or ability to pay~~  
15 ~~of himself or herself or such person, firm or corporation in which he or she is interested, or for~~  
16 ~~whom he or she is acting, represents on a later day, either orally or in writing, that such statement~~  
17 ~~theretofore made, if then again made on such day, would be then true, when in fact such~~  
18 ~~statement, if then made, would be false, and procures upon the faith thereof, for the benefit either~~  
19 ~~of himself or herself or of such other person, firm or corporation, either or any of the things of~~  
20 ~~benefit mentioned herein, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be~~  
21 ~~punished by confinement in jail for not more than one year, or by a fine of not more than \$1,000,~~  
22 ~~or both fine and imprisonment, in the discretion of the court. Any person who, with intent to~~  
23 ~~defraud, possesses two or more fraudulently obtained or counterfeit sales receipts or fraudulently~~  
24 ~~obtained or counterfeit universal product codes, or possesses a device the purpose of which is to~~  
25 ~~manufacture counterfeit retail sales receipts or counterfeit universal product code labels, is guilty~~  
26 ~~of a Class VI felony.~~

**~~§61-3-38. Publication of false advertisements; penalty. Misrepresentation of past or present military status or military awards to obtain anything of value; penalties.~~**

1 ~~Any person, firm, corporation or association, or their agents or employees, who, with intent~~  
2 ~~to sell, or in anywise dispose of, merchandise, securities, service, or anything offered by such~~  
3 ~~person, firm, corporation or association, directly or indirectly, to the public for sale or distribution,~~  
4 ~~or with intent to increase the consumption thereof, or to induce the public in any manner to enter~~

5 ~~into any obligation relating thereto, or to acquire title thereto, or an interest therein, causes, directly~~  
 6 ~~or indirectly, to be made, published, disseminated, circulated or placed before the public, in this~~  
 7 ~~state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill,~~  
 8 ~~circular, pamphlet or letter, or over any radio station, or in any other way, an advertisement of any~~  
 9 ~~sort regarding merchandise, securities, service or anything so offered to the public, which~~  
 10 ~~advertisement contains any assertion, representation or statement of fact which is untrue and~~  
 11 ~~deceptive, shall be guilty of a misdemeanor, and, upon conviction thereof shall be punished by a~~  
 12 ~~fine of not less than \$10 nor more than \$100, and such violation, by an agent or employee, shall~~  
 13 ~~be deemed an offense as well by the principal or employer, and they may be indicted for the~~  
 14 ~~same, either jointly or severally. (a) Any person who misrepresents himself or herself to:~~

15 (1) Be a member or veteran of the armed forces of the United States; or

16 (2) Be a recipient of any military commendation, decoration, or medal awarded to  
 17 members of the armed forces of the United States or the several states who does so with the  
 18 intent to obtain money, property, or a thing of value is guilty of the offense of misrepresentation  
 19 of military status.

20 (b)(1) Any person violating the provisions of this section of this code where the value of  
 21 the money, property, or thing of value is \$2,500 or more is guilty of a Class VI felony.

22 (2) Any person violating the provisions of this section where the value of the money,  
 23 property, or thing of value is less than \$2,500, is guilty of a Class I misdemeanor.

**§61-3-39. Obtaining property in return for worthless check; penalty.**

1 [Repealed.]

**§61-3-39a. Making, issuing, etc., worthless checks on a preexisting debt; penalty.**

1 [Repealed.]

**§61-3-39b. Payment as defense.**

1 [Repealed.]

**§61-3-39c. Reason for dishonor; duty of drawee.**

1 [Repealed.]

**§61-3-39d. Prima facie evidence of knowledge; identity; penalty for providing false information.**

1 [Repealed.]

**§61-3-39e. Notice of dishonor by payee; service charge.**

1 [Repealed.]

**§61-3-39f. Manner of filing complaint for warrant; form.**

1 [Repealed.]

**§61-3-39g. Complaint; notice of complaint; issuance of warrant; payment procedures; costs.**

1 [Repealed.]

**§61-3-39h. Payment of costs in worthless check cases; disposition of certain costs.**

1 [Repealed.]

**§61-3-39i. Preparation of list of worthless check warrants.**

1 [Repealed.]

**§61-3-39j. Use of worthless check list upon receipt of complaint for warrant.**

1 [Repealed.]

**§61-3-39k. Duties of prosecuting attorney upon receipt of notice of multiple worthless check warrants; magistrate court clerk to advise complainant.**

1 [Repealed.]

**§61-3-39m. Creation and operation of a program for worthless check offenders; acceptance of person in program.**

1 [Repealed.]

**§61-3-39n. Notice to persons accepted to the worthless check restitution program.**

1 [Repealed.]

**§61-3-39o. Agreement to suspend prosecution of a person accepted into the restitution**

**program.**

1 [Repealed.]

**§61-3-39p. Fees for participation in the worthless check restitution program.**

1 [Repealed.]

**§61-3-39q. Statements by individuals referred to or participating in the worthless check restitution program.**

1 [Repealed.]

**§61-3-40. Fraudulently obtaining food or lodging; penalty.**

1 [Repealed.]

**§61-3-41. Employees conservators of the peace; special railroad policemen; penalties.**

1 [Repealed.]

**§61-3-42. Intoxication of person in charge of locomotive engine or car; penalties.**

1 [Repealed.]

**§61-3-43. Jumping on or off car or train in motion; driving vehicle upon track or bridge except at crossings; penalty.**

1 [Repealed.]

**§61-3-44. Procuring gas, water or electricity, by device, with intent to defraud; penalty.**

1 [Repealed.]

**§61-3-45. Tampering with pipes, tubes, wires or electrical conductors; penalty.**

1 [Repealed.]

**§61-3-45a. Unlawful opening of pipes, pipelines, tanks, etc.; penalties.**

1 [Repealed.]

**§61-3-46. Use of slugs, false coins, etc., in coin-box telephone; penalty.**

1 [Repealed.]

**§61-3-47. Dams or obstructions in watercourses; penalty.**

1 [Repealed.]

**§61-3-48. Offenses involving damage to shrubbery, flowers, trees and timber; limitation of section; penalties.**

1 [Repealed.]

**§61-3-48a. Cutting, damaging or carrying away without written permission, timber, trees, growing plants or the products thereof; treble damages provided.**

1 [Repealed.]

**§61-3-49. Purchase of scrap metal by scrap metal purchasing businesses, salvage yards or recycling facilities; certificates, records and reports of such purchases; criminal penalties.**

1 [Repealed.]

**§61-3-49a. Unlawful sale of used, secondhand, rebuilt, repossessed, etc., watches and clocks; penalty; revocation of license to sell.**

1 [Repealed.]

**§61-3-49b. Disruption of communications and utilities services.**

1 [Repealed.]

**§61-3-50. Unauthorized transferral of recorded sounds; sale and possession; penalties; civil action; definition.**

1 [Repealed.]

**§61-3-51. Precious metals and gem dealers; records; prohibited acts.**

1 [Repealed.]

**§61-3-52. Wrongful injuries to timber; criminal penalties.**

1 [Repealed.]

**§61-3-53. Unauthorized use of dumpsters.**

1 [Repealed.]

**§61-3-54. Taking identity of another person; penalty.**

1 [Repealed.]

**§61-3-55. Failure to pay for gasoline.**

1 [Repealed.]

**§61-3-56. Scanning device or reencoder fraud; felony; definitions; and penalties.**

1 [Repealed.]

**§61-3-57. Possession of bogus receipts or universal product codes with intent to defraud; penalties.**

1 [Repealed.]

**§61-3-58. Unlawful operation of a recording device.**

1 [Repealed.]

**§61-3-59. Misrepresentation of past or present military status or military awards to obtain anything of value; penalties.**

1 [Repealed.]

**ARTICLE 3A. SHOPLIFTING**

**§61-3A-3. Penalties.**

1 A person convicted of shoplifting shall be punished as follows:

2 (a) First offense conviction. -- Upon a first shoplifting conviction:

3 (1) When the value of the merchandise is less than or equal to \$500, the person is guilty  
4 of a ~~misdemeanor~~ petty offense and, shall be fined not more than \$250.

5 (2) When the value of the merchandise exceeds \$500, the person is guilty of a Class III  
6 ~~misdemeanor and, shall be fined not less than \$100 nor more than \$500, and such fine shall not~~  
7 ~~be suspended, or the person shall be confined in jail not more than sixty days, or both.~~

8 (b) Second offense conviction. -- Upon a second shoplifting conviction:

9 (1) When the value of the merchandise is less than or equal to \$500, the person is guilty  
10 of a Class II ~~misdemeanor and, shall be fined not less than \$100 nor more than \$500, and such~~  
11 ~~fine shall not be suspended, or the person shall be confined in jail not more than six months or~~  
12 ~~both.~~

13 (2) When the value of the merchandise exceeds \$500, the person is guilty of a Class I  
 14 misdemeanor ~~and, shall be fined not less than \$500 and shall be confined in jail for not less than~~  
 15 ~~six months nor more than one year.~~

16 (c) Third offense conviction. -- Upon a third or subsequent shoplifting conviction,  
 17 regardless of the value of the merchandise, the person is guilty of a felony and, shall be fined not  
 18 less than \$500 nor more than \$500, and shall be imprisoned in ~~the penitentiary~~ a state correctional  
 19 facility for not less than one year nor more than 10 years. At least one year shall actually be spent  
 20 in confinement and not subject to probation: *Provided*, That an order for home detention by the  
 21 court pursuant to ~~the provisions of~~ §62-11B-1 *et seq.* of this code may be used as an alternative  
 22 sentence to the incarceration required by this subsection.

23 (d) Mandatory penalty. -- In addition to the fines and imprisonment imposed by this section,  
 24 in all cases of conviction for the offense of shoplifting, the court shall order the defendant to pay  
 25 a penalty to the mercantile establishment involved in the amount of \$50, or double the value of  
 26 the merchandise involved, whichever is higher. The mercantile establishment shall be entitled to  
 27 collect such mandatory penalty as in the case of a civil judgment. This penalty shall be in addition  
 28 to the mercantile establishment's rights to recover the stolen merchandise.

29 (e) In determining the number of prior shoplifting convictions for purposes of imposing  
 30 punishment under this section, the court shall disregard all such convictions occurring more than  
 31 seven years prior to the shoplifting offense in question.

**§61-3A-4a. Criminal offenses involving theft detection shielding devices; detention.**

1 [Repealed.]

**§61-3A-7. Organized retail theft; offenses; penalties; cumulation; venue; forfeiture.**

1 (a) (1) Any person who enters into a common scheme or plan with two or more other  
 2 persons to violate the provisions of section one of this article involving merchandise of a  
 3 cumulative value of \$2,0500 or more with the intent to sell, trade or otherwise distribute the  
 4 merchandise ~~shall be~~ is guilty of a Class V felony, ~~and, upon conviction, shall be imprisoned in a~~

5 ~~state correctional facility for a determinate term of not less than one nor more than ten years or~~  
6 ~~be fined not less than \$1,000 nor more than \$10,000, or both imprisoned and fined.~~

7       ~~(b) (2) Notwithstanding the provisions of subsection (a) subdivision (1) of this subsection~~  
8 ~~any person who enters into a common scheme or plan with two or more other persons to violate~~  
9 ~~the provisions of section one of this article involving merchandise of a cumulative value of \$10,000~~  
10 ~~or more with the intent to sell, trade or otherwise distribute the merchandise shall be is guilty of a~~  
11 ~~Class IV felony, and, upon conviction, shall be imprisoned in a state correctional facility for a~~  
12 ~~determinate term of not less than two nor more than twenty years fined not less than \$2,000 nor~~  
13 ~~more than \$25,000, or both imprisoned and fined.~~

14       ~~(c) (b) (1) Any person who purchases, trades or barter for, or otherwise obtains with any~~  
15 ~~form of consideration, merchandise with a cumulative value of \$2,500 or more from persons he~~  
16 ~~knows or has reason to believe was obtained by three or more persons engaged in a common~~  
17 ~~scheme or plan to violate the provisions of section one of this article shall be is guilty of a Class~~  
18 ~~V felony.~~

19       ~~(2) (d) Any person who violates the provisions of this section by purchasing, trading or~~  
20 ~~bartering for merchandise with a cumulative value of \$2,000 or more shall, upon conviction, be~~  
21 ~~imprisoned in a state correctional facility for a determinate term of not less than one year, nor~~  
22 ~~more than ten years or fined not less than \$1,000 nor more than \$10,000, or both imprisoned and~~  
23 ~~fined.~~

24       ~~(e) Notwithstanding the provisions of subsection (d) of this section, any Any person who~~  
25 ~~violates the provisions of subsection (c) of this section by purchasing, trading or bartering for~~  
26 ~~merchandise with a cumulative value of \$10,000 or more shall, upon conviction, be imprisoned in~~  
27 ~~a state correctional facility for a determinate term of not less than two years, nor more than twenty~~  
28 ~~years or fined not less than \$2,000 nor more than \$25,000, or both imprisoned and fined.~~  
29 ~~purchases, trades, or barter for, or otherwise obtains with any form of consideration,~~  
30 ~~merchandise with a cumulative value of \$10,000 or more from persons he knows or has reason~~

31 to believe was obtained by three or more persons engaged in a common scheme or plan to violate  
32 the provisions of section one of this article is guilty of a Class IV felony.

33 (f) (c) In determining the value of merchandise in a prosecution under this section, it is  
34 permissible to cumulate the value of merchandise obtained as part of a common scheme or plan.

35 (g) (d) Violations of subsections (a), and (b) and (c) of this section occurring in one or more  
36 counties of this state may be prosecuted in any county wherein any part of the offense was  
37 committed and the provisions of subsection ~~(f)~~ (c) of this section are applicable to offenses so  
38 occurring.

39 (h) (e)(1) Any interest a person has acquired or maintained in any cash, asset, or other  
40 property of value in any form, derived in part or total from any proceeds obtained from participating  
41 in a violation of this section, may be seized, and forfeited consistent with the procedures in the  
42 West Virginia Contraband Forfeiture Act, as provided in §60A-7-1 *et seq.* of this code.

43 (2) Notwithstanding subdivision (1) of this subsection, at sentencing for a violation of this  
44 section, the court may direct disgorgement to the victim or victims of any cash, asset, or other  
45 property of value in any form, derived in part or total from any proceeds obtained from such  
46 violation.

### **ARTICLE 3B. TRESPASS.**

#### **§61-3B-2. Trespass in structure or conveyance.**

1 (a) Any person who knowingly enters in, upon, or under a structure or conveyance without  
2 being authorized, licensed, or invited, or having been authorized, licensed, or invited is requested  
3 to depart by the owner, tenant, or the agent of the owner or tenant, and refuses to do so, is guilty  
4 of a Class I misdemeanor and, upon conviction thereof, shall be fined not more than \$100.

5 (b) Notwithstanding the provisions of subsection (a) of this section, any person who,  
6 without permission, knowingly and willfully enters a structure which has a clear posting that the  
7 structure has been condemned by any municipal or county government as unfit for human  
8 habitation or use, is guilty of a Class II misdemeanor ~~and, upon conviction thereof, shall be fined~~

9 ~~not more than \$100, or confined in jail not more than six months, or both fined and confined:~~  
10 *Provided, That* for any first violation of this subsection offense of trespass on condemned  
11 property, a court may substitute community service or pretrial diversion in lieu of a fine or  
12 confinement for trespassing on condemned property.

13 (c) If the offender is armed with a firearm or other dangerous weapon while in the structure  
14 or conveyance, with the intent to do bodily injury to a human being in the structure or conveyance  
15 at the time the offender knowingly trespasses, the offender, notwithstanding the provisions of §61-  
16 7-1 of this code, is guilty of a Class VI felony ~~misdemeanor, and, upon conviction thereof, shall~~  
17 ~~be fined not less than \$100 nor more than \$500, or be confined in jail for not more than one year,~~  
18 ~~or both fined and confined.~~

**§61-3B-3. Trespass on property other than structure or conveyance.**

1 (a) It is an unlawful trespass for any person to knowingly, and without being authorized,  
2 licensed, or invited, to enter or remain on any property, other than a structure or conveyance, as  
3 to which notice against entering or remaining is either given by actual communication to such  
4 person or by posting, fencing or cultivation.

5 (b) First offense conviction. — Upon a first trespassing conviction pursuant to subsection  
6 (a) of this section, the person is guilty of a ~~misdemeanor and shall be fined not less than \$100 nor~~  
7 ~~more than \$500~~ petty offense and shall be fined not more than \$300.

8 (c) Second offense conviction. — Upon a second trespassing conviction pursuant to  
9 subsection (a) of this section, the person is guilty of a Class III misdemeanor. ~~and shall be fined~~  
10 ~~not less than \$500 nor more than \$1,000.~~

11 (d) Third offense conviction. — Upon a third and subsequent trespassing conviction  
12 pursuant to subsection (a) of this section, the person is guilty of a Class II misdemeanor ~~and shall~~  
13 ~~be fined not less than \$1,000 nor more than \$1,500.~~

14 (e) If the offender defies an order to leave, personally communicated to him or her by the  
15 owner, tenant or agent of such owner or tenant, or if the offender opens any door, fence or gate,

16 and thereby exposes animals, crops or other property to waste, destruction or freedom, or causes  
 17 any damage to property by such trespassing on property other than a structure or conveyance,  
 18 he or she is guilty of a Class I misdemeanor ~~and, upon conviction, shall be fined not less than~~  
 19 ~~\$100 nor more than \$500, confined in jail for not more than six months, or both fined and confined.~~

20 (f) If the offender is armed with a firearm or other dangerous weapon with the unlawful and  
 21 felonious intent to do bodily injury to a human being during his or her commission of the offense  
 22 of trespass on property other than a structure or conveyance, such offender, notwithstanding §61-  
 23 7-1. of this code, he or she is guilty of a Class VI felony ~~misdemeanor and, upon conviction, shall~~  
 24 ~~be confined in jail for not more than six months, fined not more than \$100, or both confined and~~  
 25 ~~fined.~~

26 (g) Notwithstanding and in addition to any other penalties provided by law, any person  
 27 who performs or causes damage to property ~~in the course of~~ during a willful trespass shall be  
 28 liable to the property owner in the amount of twice the amount of such damage. However, this  
 29 article ~~shall~~ may not apply in a labor dispute.

**§61-3B-4. Trespass on student residence premises or student facility premises of an  
 institution of higher education.**

1 (a) For the purposes of this section:

2 ~~(1)~~ "Residence hall" means housing or a unit of housing provided primarily for students as  
 3 a temporary or permanent dwelling place or abode and owned, operated, or controlled by an  
 4 institution of higher education.

5 ~~(2)~~ "Student facility" means a facility owned, operated, or controlled by an institution of  
 6 higher education at which alcoholic liquor or nonintoxicating beer is purchased, sold, or served to  
 7 students enrolled at such institution, but does not include facilities at which athletic events are  
 8 regularly scheduled and an admission fee is generally charged.

9 (3) "Institution of higher education" means any state university, state college or state  
 10 community college under the control, supervision, and management of the West Virginia board of

11 trustees or West Virginia board of directors, or any other university, college, or institution of higher  
12 education in the state subject to rules for accreditation under the provisions of section seven,  
13 article four, chapter eighteen-b of this code.

14 (4) "Person authorized to have access to a residence hall or student facility" means:

15 (A) A student who resides or dwells in the residence hall; or

16 (B) An invited guest of a student who resides or dwells in the residence hall; or

17 (C) A parent, guardian or person who has legal custody of a student who resides or dwells  
18 in the residence hall; or

19 (D) An employee of the institution of higher education who is required by such employment  
20 by such institution to be in the residence hall or student facility and who is acting within the scope  
21 of his or her employment; or

22 (E) A delivery person, repair person or other such person who is not an employee of the  
23 institution of higher education but who nonetheless has a legitimate commercial reason to be in  
24 the residence hall or student facility and who is acting pursuant to such legitimate commercial  
25 reason.

26 (b) If a person authorized to have access to a residence hall or a student facility enters  
27 such residence hall or student facility and by such presence or acts interferes with the peaceful  
28 or orderly operation of such residence hall or student facility, such person may be asked to leave  
29 such residence hall or student facility. If a person not authorized to have access to a residence  
30 hall or student facility enters such a residence hall or student facility, that person may be asked  
31 to leave such residence hall or student facility notwithstanding the fact that he or she has not  
32 interfered with the peaceful or orderly operation of such residence hall or student facility or  
33 otherwise committed a breach of the peace or violated any statute or ordinance. Such request to  
34 leave may be made by the president or other administrative head of the institution of higher  
35 education, an employee designated by the president to maintain order in the residence hall or  
36 student facility, a campus police officer appointed pursuant to the provisions of section five, article

37 four, chapter eighteen-b of this code, or a municipal police officer, a sheriff or deputy sheriff, or a  
38 member of the West Virginia state police.

39 (c) It ~~shall be~~ is unlawful for a person to remain in a residence hall or student facility after  
40 being asked to leave as provided for in subsection (b) of this section.

41 (d) Any person who violates the provisions of subsection (c) of this section ~~shall be~~ is guilty  
42 of a ~~misdemeanor~~ petty offense and, upon conviction thereof, shall be fined \$15. For any second  
43 or subsequent conviction for a violation occurring within one year after a previous violation for  
44 similar conduct, such person shall be fined an amount not to exceed \$100.

45 (e) This section ~~shall~~ may be construed to be in derogation of the common law, nor ~~shall~~  
46 may the provisions of this section contravene or infringe upon existing statutes related to the same  
47 subject.

**§61-3B-5. Trespass on state government property; aiding and abetting; penalties.**

1 (a) Notwithstanding any provision of this code to the contrary, any person who knowingly  
2 and willfully violates an administrative order of a court, a rule or emergency rule promulgated by  
3 the secretary of administration, a joint rule of the Senate and House of Delegates or a rule of the  
4 Senate or House of Delegates relating to access to government buildings or facilities or portions  
5 thereof under their control or who knowingly and willfully aids or abets another to violate such an  
6 order, rule or joint rule is guilty of a Class III misdemeanor ~~and, upon conviction, shall be confined~~  
7 ~~for not more than thirty days or fined less than \$500, or both.~~

8 (b) Any person who violates the provisions of subsection (a) of this section with the intent  
9 to commit a crime which constitutes a misdemeanor is guilty of a Class I misdemeanor ~~and, upon~~  
10 ~~conviction, shall be confined in a county or regional jail for not more than one year or fined not~~  
11 ~~more than \$1,000, or both.~~

12 (c) Any person who violates the provisions of subsection (a) of this section with the intent  
13 to commit a crime which constitutes a felony is guilty of a Class VI felony ~~and, upon conviction,~~  
14 ~~shall be incarcerated in a state correctional facility for not less than one nor more than five years~~

15 ~~or fined not more than \$5,000, or both.~~

**§61-3B-6. Mine trespass; penalties.**

1 (a) A person who willfully enters an underground coal mine, whether active workings,  
2 inactive workings, or abandoned workings, without permission, is guilty of a Class VI felony and,  
3 upon conviction thereof, shall be imprisoned ~~in a correctional facility not less than one year and~~  
4 ~~nor more than 10 years~~ accordingly and shall be fined not less than \$5,000 nor more than  
5 \$10,000: *Provided*, That for any conviction pursuant to this subsection, any inactive or abandoned  
6 underground workings must be either: (1) Sealed; or (2) clearly identified by signage at some  
7 conspicuous place near the entrance of the mine that includes a notice that the unauthorized entry  
8 into the mine is a felony criminal offense.

9 (b) A person who willfully enters a surface coal mine, whether active workings, inactive  
10 workings, or abandoned workings, without permission, and with the intent to commit a felony or  
11 any larceny, is guilty of a Class III misdemeanor and, upon conviction thereof, shall be confined  
12 ~~in jail not less than one week and not more than one month~~ accordingly and shall be fined not  
13 less than \$1,000 nor more than \$5,000. For a second conviction, pursuant to this subsection, the  
14 person ~~shall be~~ is guilty of a Class VI felony and shall be confined ~~in a correctional facility not less~~  
15 ~~than one year and not more than five years~~ accordingly and shall be fined not less than \$5,000  
16 nor more than \$10,000. For a third or subsequent conviction, pursuant to this subsection, the  
17 person ~~shall be~~ is guilty of a Class IV felony and shall be confined ~~in a correctional facility not less~~  
18 ~~than five years and not more than 10 years~~ accordingly and shall be fined not less than \$10,000,  
19 nor more than \$25,000.

20 (c) If a person violates subsections (a) or (b) of this section, and during any rescue efforts  
21 for any such person, there occurs an injury that causes substantial physical pain, illness, or any  
22 impairment of physical condition to any person other than himself or herself, then that person is  
23 guilty of a Class II misdemeanor and, upon conviction thereof, shall be confined in jail for not less  
24 than one week and not more than ~~one year~~ six months and shall be fined not less than \$1,000

25 nor more than \$5,000: *Provided*, That such jail term shall include actual confinement of not less  
26 than seven days.

27 (d) If a person violates subsections (a) or (b) of this section, and during any rescue efforts  
28 for any such person, there occurs an injury that creates a substantial risk of death, causes serious  
29 or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of  
30 the function of any bodily organ to any person other than himself or herself, then that person is  
31 guilty of a Class VI felony and, upon conviction thereof, shall be imprisoned accordingly ~~in a~~  
32 ~~correctional facility for not less than two nor more than 10 years~~ and shall be fined not less than  
33 \$5,000 nor more than \$10,000.

34 (e) If a person violates subsections (a) or (b) of this section, and during any rescue efforts  
35 of such person, the death of any other person occurs, then that person is guilty of a Class IV  
36 felony and, upon conviction thereof, shall be imprisoned accordingly ~~in a correctional facility for~~  
37 ~~not less than three nor more than 15 years~~ and shall be fined not less than \$10,000 nor more than  
38 \$25,000.

39 (f) Notwithstanding and in addition to any other penalties provided by law, any person who  
40 performs or causes damage to property during a willful trespass in violation of this section is liable  
41 to the property owner in the amount of twice the amount of such damage.

42 (g) The terms "mine", "active workings", "inactive workings", and "abandoned workings"  
43 have the same meaning ascribed to such terms as set forth in §22A-1-2 of this code.

44 (h) Nothing in this section shall may be construed to prevent lawful assembly and petition  
45 for the lawful redress of grievances, during any dispute, including, but not limited to, activities  
46 protected by the West Virginia Constitution or the United States Constitution or any statute of this  
47 state or the United States.

**§61-3B-7. Animal or crop facilities trespass; penalties; injunctive relief. Offenses involving  
damage to shrubbery, flowers, trees and timber; limitation of subsection; penalties.  
Cutting, damaging or carrying away without written permission, timber, trees,**

**growing plants or the products thereof; treble damages provided.**

1 (a) (1) As used in this subsection:

2 ~~(1)~~ (A) “Animal” means poultry, livestock, domestic animals, and captive cervids owned  
3 and possessed by persons licensed pursuant to §19-2H-1 *et seq.* of this code. The term does not  
4 include an animal used for illegal gaming.

5 ~~(2)~~ (B) “Animal or crop facility” means a facility that is used in the production, management,  
6 sale, or processing of animals or crops. The term includes, but is not limited to:

7 ~~(A)~~ (i) A building, greenhouse, structure, laboratory, pasture, field, paddock, pond,  
8 impoundment, or premises where animals or crops are located;

9 ~~(B)~~ (ii) A managed bee colony;

10 ~~(C)~~ (iii) A livestock market;

11 ~~(D)~~ (iv) A facility used for the preparation of, or processing of, animals, crops, or value-  
12 added foods for sale; and

13 ~~(E)~~ (v) A facility used to carry out any agritourism activity, as that term is defined and used  
14 in §19-36-1 *et seq.* of this code.

15 ~~(3)~~ (C) “Crop” means a shrub, vine, tree, seedling, shoot, slip, or other plant capable of  
16 producing food, fiber, medicine, nursery stock, floral products, or aesthetic beauty.

17 ~~(b)~~ (2) Any person who willfully trespasses on the property of another which constitutes  
18 an animal or crop facility with the intent to commit larceny, destroy property, or disrupt the  
19 operation of the facility is guilty of willful trespass upon an animal or crop facility.

20 ~~(c)~~ (3) Any person who conspires with 3 or more persons to violate ~~subsection (b)~~  
21 subdivision (2) of this subsection and commits an overt act in furtherance thereof is guilty of  
22 conspiracy to willfully trespass upon an animal or crop facility.

23 ~~(d)~~ (4) Any person who violates ~~subsection (b)~~ subdivision (2) of this subsection is guilty  
24 of a Class III misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor  
25 more than \$1,000 or confined in jail accordingly not more than 30 days, or both fined and confined.

26 ~~(e)~~ (5) Notwithstanding the provisions of ~~subsection (d)~~ subdivision (4) of this subsection,  
27 any person convicted of a second or subsequent violation of ~~subsection (b)~~ subdivision (2) or a  
28 violation of ~~subsection (c)~~ subdivision (3) of this section is guilty of a Class VI felony and, upon  
29 conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000, or imprisoned ~~in a~~  
30 ~~state correctional facility for not less than one nor more than five years~~ accordingly, or both fined  
31 and imprisoned.

32 ~~(f)~~ (6) Notwithstanding and in addition to any other penalties provided by law, any person  
33 who performs, or causes damage to property in the course of, a willful trespass in violation of this  
34 section is liable to the owner or operator of the animal or crop facility in the amount of twice any  
35 damage caused.

36 ~~(g)~~ (7) The owner or operator of an animal or crop facility may bring an action for injunctive  
37 relief against a person who engages in, or threatens to engage in, conduct that constitutes a  
38 violation of this section:

39 ~~(1)~~ (A) The action may be brought in the circuit court of any county in which any part of  
40 the conduct or threatened conduct occurs or is threatened to occur.

41 ~~(2)~~ (B) The circuit court may grant any appropriate injunctive relief to prevent or abate the  
42 conduct or threatened conduct, including a temporary restraining order, preliminary injunction, or  
43 permanent injunction.

44 ~~(3)~~ (C) The circuit court may issue injunctive relief without the owner or operator of an  
45 animal or crop facility giving security for its issuance.

46 (b) (1) It is unlawful to break, cut, take, or carry away, or in any manner to damage any of  
47 the shrubbery or flowers, including everything under the title of flora, whether wild or cultivated,  
48 growing within one hundred yards on either side of any public road in this state, without the  
49 permission in writing of the owner or tenant of the land upon which the shrubbery or flowers,  
50 including everything under the title of flora, are growing.

51 (2) It is unlawful for any person to enter upon the lands or premises of another without

52 written permission of the owner of the lands or premises, in order to break, cut, take or carry away  
53 or in any manner to damage or cause to be broken, cut, taken or carried away or in any manner  
54 damaged, any trees or timber on the land.

55 (3) It is unlawful for any person willfully or knowingly to have in his or her possession, or  
56 to haul along any public road in this state, any trees, shrubbery, or flowers, including everything  
57 under the title of flora, which are protected by this section, unless the person so having in his or  
58 her possession or hauling the trees, shrubbery or flowers, and any other plant, has permission in  
59 writing so to do from the owner or tenant of the land from which they have been taken.

60 (4) At the request of a law-enforcement officer, a person engaged in any act which would  
61 constitute an offense under the provisions of subdivision (1), (2) or (3) of this subsection if such  
62 act were done without the required permission specified therein, shall display the written  
63 permission to such officer.

64 (5) Notwithstanding the provisions of this subsection or subsection (c) of this section:

65 (A) An employee of the department of highways or of a county or municipality performing  
66 roadside maintenance shall obtain the permission of an owner before engaging in any act  
67 specified in subdivision (1), (2) or (3) of this subsection but is not required to obtain the permission  
68 in writing or to display the written permission as provided in subdivision (4) of this subsection; and

69 (B) When any of the acts specified in subdivision (1), (2) or (3) of this subsection are  
70 permitted pursuant to an existing contract with the owner or a predecessor in title to the subject  
71 real estate, or by virtue of a judgment or decree of a court of competent jurisdiction, or by other  
72 operation of civil law, then a public utility as defined in §24-1-2. of this code, or any other person  
73 or entity holding such existing rights, may not be required to obtain any further permission of the  
74 present owner to exercise such existing rights: *Provided*, That the holder of such existing rights  
75 shall notify the owner of the land of the holder's intent to perform proposed work upon such lands,  
76 by first class United States mail, postage prepaid, addressed to the person and address of record  
77 upon the current land books in the assessor's office in the county in which the land is situate:

78 Provided, however, That if the proposed work includes several tracts within a larger area, then  
79 notice shall be sufficient if provided by publication in a newspaper of general circulation within the  
80 county, describing the boundaries and type of work proposed within such area of work. Where  
81 prior notice is not practical by reason of a sudden emergency which endangers persons or  
82 property of either the owner of the real property, the holder of these rights, the general public or  
83 public service, then the owner of the real property shall be notified that the emergency work has  
84 been performed, such notice to be by first class United States mail, as above provided for prior  
85 notice to the current owner as indicated in the land book records. Where the emergency work was  
86 performed on several tracts within a larger area, then the notice shall be sufficient if made by  
87 publication in a newspaper of general circulation within the county.

88 (6) Any person who violates the provisions of subdivision (1) or (3) of this subsection is  
89 guilty of a petty offense, and, upon conviction thereof, for the first offense shall be fined not more  
90 than \$50, and for subsequent offenses is guilty of a class III misdemeanor for each offense.

91 (7) Any person who violates the provisions of subdivision (2) of this subsection is guilty of  
92 a petty offense, and, upon conviction thereof, for the first offense shall be fined not less than \$50,  
93 and for subsequent offenses is guilty of a class III misdemeanor for each offense.

94 (8) Magistrates have concurrent jurisdiction with circuit courts for offenses under this  
95 subsection.

96 (c) Any person who enters upon the land or premises of another without written permission  
97 from the owner of the land or premises in order to cut, damage, or carry away, or cause to be cut,  
98 damaged or carried away, any timber, trees, logs, posts, fruit, nuts, growing plant, or product of  
99 any growing plant, shall be liable to the owner in the amount of three times the value of the timber,  
100 trees, growing plants, or products thereof, which shall be in addition to and notwithstanding any  
101 other penalties by law provided.

**§61-3B-8. Critical Infrastructure Protection Act; prohibiting certain acts, including trespass**  
**and conspiracy to trespass against property designated a critical infrastructure**

**facility; criminal penalties; and civil action.**

1 (a) This section may be referred to as the “West Virginia Critical Infrastructure Protection  
2 Act”.

3 (b) For purposes of this section:

4 “Critical Infrastructure” means systems and assets, whether physical or virtual, so vital to  
5 the United States of America or the State of West Virginia that the incapacity or destruction of  
6 such systems and assets would have a debilitating impact on security, national economic security,  
7 state economic security, national public health or safety, state public health or safety, or any  
8 combination of those matters, whether such systems or assets are in operation or are under any  
9 state of construction.

10 “Critical infrastructure facility” means one of the following, if completely enclosed by a  
11 fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked  
12 with a sign or signs that are posted on the property that are reasonably likely to come to the  
13 attention of intruders and indicate that entry is forbidden without site authorization:

14 (1) A petroleum or alumina refinery,

15 (2) An electrical power generating facility, substation, switching station, electrical control  
16 center or electric power lines and associated equipment infrastructure,

17 (3) A chemical, polymer or rubber manufacturing facility,

18 (4) A water intake structure, water treatment facility, wastewater treatment plant or pump  
19 station,

20 (5) A natural gas compressor station,

21 (6) A liquid natural gas terminal or storage facility,

22 (7) Wireline and wireless telecommunications infrastructure,

23 (8) A port, railroad switching yard, trucking terminal, or other freight transportation facility,

24 (9) A gas processing plant, including a plant used in the processing, treatment or  
25 fractionation of natural gas or natural gas liquids,

26 (10) A transmission facility used by a federally licensed radio or television station,

27 (11) A steelmaking facility that uses an electric arc furnace to make steel,

28 (12) A facility identified and regulated by the United States Department of Homeland  
29 Security Chemical Facility Anti-Terrorism Standards (CFATS) program,

30 (13) A dam that is regulated by the state or federal government,

31 (14) A natural gas distribution utility facility including, but not limited to, pipeline  
32 interconnections, a city gate or town border station, metering station, below- or above-ground  
33 pipeline or piping and truck loading or offloading facility, a natural gas storage facility, a natural  
34 gas transmission facility, or a natural gas utility distribution facility,

35 (15) A crude oil or refined products storage and distribution facility including, but not limited  
36 to, valve sites, pipeline interconnections, pump station, metering station, below- or above-ground  
37 pipeline or piping and truck loading or offloading facility,

38 (16) Military facilities, including national guard facilities and equipment storage areas  
39 where non-military personnel are prohibited,

40 (17) Department of Highways facilities and locations near or on roads or highways where  
41 the public is prohibited,

42 (18) Health care facilities, or

43 (19) Any above-ground portion of an oil, gas, hazardous liquid or chemical pipeline, tank,  
44 or other storage facility that is enclosed by a fence, other physical barrier or is clearly marked with  
45 signs prohibiting trespassing, that are obviously designed to exclude intruders.

46 (c)(1) Any person who willfully and knowingly trespasses or enters property containing a  
47 critical infrastructure facility without permission by the owner of the property or lawful occupant  
48 thereof is guilty of a Class II misdemeanor and, upon conviction thereof, shall be fined of not less  
49 than \$250 nor more than \$1,000, or confined in jail, or both fined and confined. If the intent of the  
50 trespasser is to willfully damage, destroy, vandalize, deface, tamper with equipment, or impede  
51 or inhibit operations of the critical infrastructure facility, the person is guilty of a Class VI felony

52 and, upon conviction thereof, shall be fined not less than \$500 nor more than \$3,000, or  
53 imprisoned in a state correctional facility accordingly, or both fined and imprisoned.

54 (2) Any person who willfully damages, destroys, vandalizes, defaces or tampers with  
55 equipment in a critical infrastructure facility is guilty of a Class V felony and, upon conviction  
56 thereof, shall be fined not less than \$1,000 nor more than \$5,000, or imprisoned in a state  
57 correctional facility accordingly, or both fined and imprisoned.

58 (3) Any person or organization who conspires with any person or organization to commit  
59 the offense of trespass against a critical infrastructure facility in violation of subdivision (1) of  
60 subsection (c) of this section is guilty of a Class II misdemeanor and, upon conviction thereof,  
61 shall be fined accordingly. Any person or organization who conspires with any person or  
62 organization to willfully damage, destroy, vandalize, deface, or tamper with equipment in a critical  
63 infrastructure facility is guilty of a Class VI felony and, shall, upon conviction thereof, be fined  
64 accordingly.

65 (d)(1) Any person who is arrested for or convicted of an offense under this section may be  
66 held civilly liable for any damages to personal or real property while trespassing, in addition to the  
67 penalties imposed by this section.

68 (2) Any person or entity that compensates, provides consideration to, or remunerates a  
69 person for trespassing as described in subdivision (1) of subsection (c) of this section may also  
70 be held liable for damages to personal or real property committed by the person compensated or  
71 remunerated for trespassing.

72 (e) The provisions of this section do not apply to:

73 (1) Any person or organization:

74 (i) Monitoring or attentive to compliance with public or worker safety laws, or, wage and  
75 hour requirements;

76 (ii) Picketing at the workplace that is otherwise lawful and arises out of a bona fide labor  
77 dispute including any controversy concerning wages, salaries, hours, working conditions or

78 benefits, including health and welfare, sick leave, insurance, and pension or retirement provisions,  
 79 the managing or maintenance of collective bargaining agreements, and the terms to be included  
 80 in those agreements; or

81 (iii) Engaging in union organizing or recruitment activities including attempting to reach  
 82 workers verbally, in writing with pamphlets and investigation of non-union working conditions, or  
 83 both.

84 (2) The right to free speech or assembly, including, but not limited to, protesting and  
 85 picketing.

86 (3) To a contractor who has a contractual relationship with a critical infrastructure facility  
 87 and the contractor's employees are acting within their scope of employment performing work at a  
 88 critical infrastructure facility.

### **ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.**

#### **§61-3C-2. ~~Legislative findings.~~ Definitions.**

1 The Legislature finds that:

2 ~~(a) The computer and related industries play an essential role in the commerce and~~  
 3 ~~welfare of this state.~~

4 ~~(b) Computer-related crime is a growing problem in business and government.~~

5 ~~(c) Computer-related crime has a direct effect on state commerce and can result in serious~~  
 6 ~~economic and, in some cases, physical harm to the public.~~

7 ~~(d) Because of the pervasiveness of computers in today's society, opportunities are great~~  
 8 ~~for computer-related crimes through the introduction of false records into a computer or computer~~  
 9 ~~system, the unauthorized use of computers and computer facilities, the alteration and destruction~~  
 10 ~~of computers, computer programs and computer data, and the theft of computer resources,~~  
 11 ~~computer software and computer data.~~

12 ~~(e) Because computers have now become an integral part of society, the Legislature~~  
 13 ~~recognizes the need to protect the rights of owners and legitimate users of computers and~~

14 ~~computer systems, as well as the privacy interest of the general public, from those who abuse~~  
15 ~~computers and computer systems.~~

16 ~~(f) While various forms of computer crime or abuse might possibly be the subject of~~  
17 ~~criminal charges or civil suit based on other provisions of law, it is appropriate and desirable that~~  
18 ~~a supplemental and additional statute be provided which specifically proscribes various forms of~~  
19 ~~computer crime and abuse and provides criminal penalties and civil remedies therefor.~~

20 As used in this article, unless the context clearly indicates otherwise:

21 “Access” means to instruct, communicate with, store data in, retrieve data from, intercept  
22 data from or otherwise make use of any computer, computer network, computer program,  
23 computer software, computer data or other computer resources.

24 “Authorization” means the express or implied consent given by a person to another to  
25 access or use said person’s computer, computer network, computer program, computer software,  
26 computer system, password, identifying code or personal identification number.

27 “Computer” means an electronic, magnetic, optical, electrochemical, or other high-speed  
28 data processing device performing logical, arithmetic or storage functions and includes any data  
29 storage facility or communication facility directly related to or operating in conjunction with such  
30 device. The term “computer” includes any connected or directly related device, equipment or  
31 facility which enables the computer to store, retrieve or communicate computer programs,  
32 computer data or the results of computer operations to or from a person, another computer or  
33 another device, file servers, mainframe systems, desktop personal computers, laptop personal  
34 computers, tablet personal computers, cellular telephones, game consoles and any other  
35 electronic data storage device or equipment, but such term does not include an automated  
36 typewriter or typesetter, a portable hand-held calculator or other similar device.

37 “Computer contaminant” means any set of computer instructions that are designed to  
38 damage or destroy information within a computer, computer system or computer network without  
39 the consent or permission of the owner of the information. They include, but are not limited to, a

40 group of computer instructions commonly called viruses or worms that are self-replicating or self-  
41 propagating and are designed to contaminate other computer programs or computer data,  
42 consume computer resources or damage or destroy the normal operation of the computer.

43 “Computer data” means any representation of knowledge, facts, concepts, instruction or  
44 other information computed, classified, processed, transmitted, received, retrieved, originated,  
45 stored, manifested, measured, detected, recorded, reproduced, handled or utilized by a computer,  
46 computer network, computer program or computer software and may be in any medium, including,  
47 but not limited to, computer printouts, microfilm, microfiche, magnetic storage media, optical  
48 storage media, punch paper tape or punch cards, or it may be stored internally in read-only  
49 memory or random access memory of a computer or any other peripheral device.

50 “Computer network” means a set of connected devices and communication facilities,  
51 including more than one computer, with the capability to transmit computer data among them  
52 through such communication facilities.

53 “Computer operations” means arithmetic, logical, storage, display, monitoring or retrieval  
54 functions or any combination thereof and includes, but is not limited to, communication with,  
55 storage of data in or to, or retrieval of data from any device and the human manual manipulation  
56 of electronic magnetic impulses. A “computer operation” for a particular computer shall also mean  
57 any function for which that computer was designed.

58 “Computer program” means an ordered set of computer data representing instructions or  
59 statements, in a form readable by a computer, which controls, directs or otherwise influences the  
60 functioning of a computer or computer network.

61 “Computer software” means a set of computer programs, procedures and associated  
62 documentation concerned with computer data or with the operation of a computer, computer  
63 program or computer network.

64 “Computer services” means computer access time, computer data processing or computer  
65 data storage and the computer data processed or stored in connection therewith.

66 “Computer supplies” means punch cards, paper tape, magnetic tape, magnetic disks or  
67 diskettes, optical disks or diskettes, disk or diskette packs, paper, microfilm and any other tangible  
68 input, output or storage medium used in connection with a computer, computer network, computer  
69 data, computer software or computer program.

70 “Computer resources” includes, but is not limited to, information retrieval; computer data  
71 processing, transmission and storage; and any other functions performed, in whole or in part, by  
72 the use of a computer, computer network, computer software or computer program.

73 “Owner” means any person who owns or leases or is a licensee of a computer, computer  
74 network, computer data, computer program, computer software, computer resources or computer  
75 supplies.

76 “Person” means any natural person, general partnership, limited partnership, trust,  
77 association, corporation, joint venture or any state, county or municipal government and any  
78 subdivision, branch, department, or agency thereof.

79 “Property” includes:

80 (1) Real property;

81 (2) Computers and computer networks;

82 (3) Financial instruments, computer data, computer programs, computer software and all  
83 other personal property regardless of whether they are:

84 (i) Tangible or intangible;

85 (ii) In a format readable by humans or by a computer;

86 (iii) In transit between computers or within a computer network or between any devices  
87 which comprise a computer; or

88 (iv) Located on any paper or in any device on which it is stored by a computer or by a  
89 human; and

90 (4) Computer services.

91 “Value” means having any potential to provide any direct or indirect gain or advantage to

92 any person.

93 “Financial instrument” includes, but is not limited to, any check, draft, warrant, money  
 94 order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction  
 95 authorization mechanism, marketable security or any computerized representation thereof.

96 “Value of property or computer services” shall be: (1) The market value of the property or  
 97 computer services at the time of a violation of this article; or (2) if the property or computer services  
 98 are unrecoverable, damaged or destroyed as a result of a violation of section six or seven of this  
 99 article, the cost of reproducing or replacing the property or computer services at the time of the  
 100 violation.

**§61-3C-3. Definitions. Computer fraud; access to Legislative or state-owned computer;**  
**criminal penalties.**

1 As used in this article, unless the context clearly indicates otherwise:

2 (a) ~~“Access” means to instruct, communicate with, store data in, retrieve data from,~~  
 3 ~~intercept data from or otherwise make use of any computer, computer network, computer~~  
 4 ~~program, computer software, computer data or other computer resources.~~

5 (b) ~~“Authorization” means the express or implied consent given by a person to another to~~  
 6 ~~access or use said person’s computer, computer network, computer program, computer software,~~  
 7 ~~computer system, password, identifying code or personal identification number.~~

8 (c) ~~“Computer” means an electronic, magnetic, optical, electrochemical or other high-~~  
 9 ~~speed data processing device performing logical, arithmetic or storage functions and includes any~~  
 10 ~~data storage facility or communication facility directly related to or operating in conjunction with~~  
 11 ~~such device. The term “computer” includes any connected or directly related device, equipment~~  
 12 ~~or facility which enables the computer to store, retrieve or communicate computer programs,~~  
 13 ~~computer data or the results of computer operations to or from a person, another computer or~~  
 14 ~~another device, file servers, mainframe systems, desktop personal computers, laptop personal~~  
 15 ~~computers, tablet personal computers, cellular telephones, game consoles and any other~~

16 ~~electronic data storage device or equipment, but such term does not include an automated~~  
17 ~~typewriter or typesetter, a portable hand-held calculator or other similar device.~~

18 ~~(d) "Computer contaminant" means any set of computer instructions that are designed to~~  
19 ~~damage or destroy information within a computer, computer system or computer network without~~  
20 ~~the consent or permission of the owner of the information. They include, but are not limited to, a~~  
21 ~~group of computer instructions commonly called viruses or worms that are self-replicating or self-~~  
22 ~~propagating and are designed to contaminate other computer programs or computer data,~~  
23 ~~consume computer resources or damage or destroy the normal operation of the computer.~~

24 ~~(e) "Computer data" means any representation of knowledge, facts, concepts, instruction~~  
25 ~~or other information computed, classified, processed, transmitted, received, retrieved, originated,~~  
26 ~~stored, manifested, measured, detected, recorded, reproduced, handled or utilized by a computer,~~  
27 ~~computer network, computer program or computer software and may be in any medium, including,~~  
28 ~~but not limited to, computer printouts, microfilm, microfiche, magnetic storage media, optical~~  
29 ~~storage media, punch paper tape or punch cards, or it may be stored internally in read-only~~  
30 ~~memory or random access memory of a computer or any other peripheral device.~~

31 ~~(f) "Computer network" means a set of connected devices and communication facilities,~~  
32 ~~including more than one computer, with the capability to transmit computer data among them~~  
33 ~~through such communication facilities.~~

34 ~~(g) "Computer operations" means arithmetic, logical, storage, display, monitoring or~~  
35 ~~retrieval functions or any combination thereof and includes, but is not limited to, communication~~  
36 ~~with, storage of data in or to, or retrieval of data from any device and the human manual~~  
37 ~~manipulation of electronic magnetic impulses. A "computer operation" for a particular computer~~  
38 ~~shall also mean any function for which that computer was designed.~~

39 ~~(h) "Computer program" means an ordered set of computer data representing instructions~~  
40 ~~or statements, in a form readable by a computer, which controls, directs or otherwise influences~~  
41 ~~the functioning of a computer or computer network.~~

42 ~~(l) "Computer software" means a set of computer programs, procedures and associated~~  
43 ~~documentation concerned with computer data or with the operation of a computer, computer~~  
44 ~~program or computer network.~~

45 ~~(j) "Computer services" means computer access time, computer data processing or~~  
46 ~~computer data storage and the computer data processed or stored in connection therewith.~~

47 ~~(k) "Computer supplies" means punch cards, paper tape, magnetic tape, magnetic disks~~  
48 ~~or diskettes, optical disks or diskettes, disk or diskette packs, paper, microfilm and any other~~  
49 ~~tangible input, output or storage medium used in connection with a computer, computer network,~~  
50 ~~computer data, computer software or computer program.~~

51 ~~(l) "Computer resources" includes, but is not limited to, information retrieval; computer data~~  
52 ~~processing, transmission and storage; and any other functions performed, in whole or in part, by~~  
53 ~~the use of a computer, computer network, computer software or computer program.~~

54 ~~(m) "Owner" means any person who owns or leases or is a licensee of a computer,~~  
55 ~~computer network, computer data, computer program, computer software, computer resources~~  
56 ~~or computer supplies.~~

57 ~~(n) "Person" means any natural person, general partnership, limited partnership, trust,~~  
58 ~~association, corporation, joint venture or any state, county or municipal government and any~~  
59 ~~subdivision, branch, department or agency thereof.~~

60 ~~(o) "Property" includes:~~

61 ~~(1) Real property;~~

62 ~~(2) Computers and computer networks;~~

63 ~~(3) Financial instruments, computer data, computer programs, computer software and all~~  
64 ~~other personal property regardless of whether they are:~~

65 ~~(i) Tangible or intangible;~~

66 ~~(ii) In a format readable by humans or by a computer;~~

67 ~~(iii) In transit between computers or within a computer network or between any devices~~

68 ~~which comprise a computer; or~~

69 ~~(iv) Located on any paper or in any device on which it is stored by a computer or by a~~  
70 ~~human; and~~

71 ~~(4) Computer services.~~

72 ~~(p) "Value" means having any potential to provide any direct or indirect gain or advantage~~  
73 ~~to any person.~~

74 ~~(q) "Financial instrument" includes, but is not limited to, any check, draft, warrant, money~~  
75 ~~order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction~~  
76 ~~authorization mechanism, marketable security or any computerized representation thereof.~~

77 ~~(r) "Value of property or computer services" shall be: (1) The market value of the property~~  
78 ~~or computer services at the time of a violation of this article; or (2) if the property or computer~~  
79 ~~services are unrecoverable, damaged or destroyed as a result of a violation of section six or seven~~  
80 ~~of this article, the cost of reproducing or replacing the property or computer services at the time~~  
81 ~~of the violation.~~

82 (a) Any person who, knowingly and willfully, directly, or indirectly, accesses or causes to  
83 be accessed any computer, computer services or computer network for the purpose of (1)  
84 executing any scheme or artifice to defraud or (2) obtaining money, property or services by means  
85 of fraudulent pretenses, representations or promises is guilty of a Class V felony.

86 (b)(1) Any person who, knowingly and willfully, directly, or indirectly, accesses, attempts  
87 to access, or causes to be accessed any data stored in a Legislative or state-owned computer  
88 without authorization is guilty of a Class VI felony.

89 (2) Notwithstanding the provisions of §61-3C-16. of this code to the contrary, in any  
90 criminal prosecution under this subsection against a state employee, public officer, or member of  
91 the Legislature, it is not a defense (A) that the defendant had reasonable grounds to believe that  
92 he or she had authorization to access the data merely because of his or her employment or  
93 membership, or (B) that the defendant could not have reasonably known that he or she did not

94 have authorization to access the data: *Provided*, That the Joint Committee on Government and  
95 Finance shall promulgate rules for the respective houses of the Legislature regarding appropriate  
96 access of members and staff and others to the legislative computer system.

**~~§61-3C-4. Computer fraud; access to Legislature computer; criminal penalties.~~**

**Unauthorized access to computer services.**

1 ~~(a) Any person who, knowingly and willfully, directly or indirectly, accesses or causes to~~  
2 ~~be accessed any computer, computer services or computer network for the purpose of (1)~~  
3 ~~executing any scheme or artifice to defraud or (2) obtaining money, property or services by means~~  
4 ~~of fraudulent pretenses, representations or promises is guilty of a felony, and, upon conviction~~  
5 ~~thereof, shall be fined not more than \$10,000 or imprisoned in the penitentiary for not more than~~  
6 ~~ten years, or both fined and imprisoned.~~

7 ~~(b)(1) Any person who, knowingly and willfully, directly or indirectly, accesses, attempts to~~  
8 ~~access, or causes to be accessed any data stored in a computer owned by the Legislature without~~  
9 ~~authorization is guilty of a felony, and, upon conviction thereof, shall be fined not more than \$5,000~~  
10 ~~or imprisoned in the penitentiary for not more than five years, or both fined and imprisoned.~~

11 ~~(2) Notwithstanding the provisions of section seventeen of this article to the contrary, in~~  
12 ~~any criminal prosecution under this subsection against an employee or member of the Legislature,~~  
13 ~~it shall not be a defense (A) that the defendant had reasonable grounds to believe that he or she~~  
14 ~~had authorization to access the data merely because of his or her employment or membership,~~  
15 ~~or (B) that the defendant could not have reasonably known he or she did not have authorization~~  
16 ~~to access the data: *Provided*, That the Joint Committee on Government and Finance shall~~  
17 ~~promulgate rules for the respective houses of the Legislature regarding appropriate access of~~  
18 ~~members and staff and others to the legislative computer system.~~

19 Any person who knowingly, willfully and without authorization, directly or indirectly,  
20 accesses or causes to be accessed a computer or computer network with the intent to obtain  
21 computer services is guilty of a Class I misdemeanor, and, upon conviction thereof, shall, further,

22 be liable to the value of any economic benefit derived from such unauthorized access.

**§61-3C-5. Unauthorized access to computer services. Unauthorized possession of computer data or programs.**

1 Any person who knowingly, willfully and without authorization, directly or indirectly,  
2 accesses or causes to be accessed a computer or computer network with the intent to obtain  
3 computer services shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined  
4 not less than \$200 nor more than \$1,000 or confined in the county jail not more than one year, or  
5 both.

6 (a) Any person who knowingly, willfully and without authorization possesses any computer  
7 data or computer program belonging to another and having a value of \$25,000 or more is guilty  
8 of a Class V felony.

9 (b) Any person who knowingly, willfully and without authorization possesses any computer  
10 data or computer program belonging to another and having a value of less than \$25,000 but  
11 greater than \$2,500 is guilty of a Class VI felony.

12 (c) Any person who knowingly, willfully and without authorization possesses any computer  
13 data or computer program belonging to another and having a value of \$2,500 or less is guilty of  
14 a Class I misdemeanor.

**§61-3C-6. Unauthorized possession of computer data or programs. Alteration, destruction, etc., of computer equipment.**

1 ~~(a) Any person who knowingly, willfully and without authorization possesses any computer~~  
2 ~~data or computer program belonging to another and having a value of \$5,000 or more shall be~~  
3 ~~guilty of a felony, and, upon conviction thereof, shall be fined not more than \$10,000 or imprisoned~~  
4 ~~in the penitentiary for not more than ten years, or both.~~

5 ~~(b) Any person who knowingly, willfully and without authorization possesses any computer~~  
6 ~~data or computer program belonging to another and having a value of less than \$5,000 shall be~~  
7 ~~guilty of a misdemeanor, and, upon conviction thereof shall be fined not more than \$1,000 or~~

8 confined in the county jail for not more than one year, or both.

9 Any person who knowingly, willfully and without authorization, directly or indirectly,  
10 tampers with, deletes, alters, damages or destroys or attempts to tamper with, delete, alter,  
11 damage or destroy any computer, computer network, computer software, computer resources,  
12 computer program or computer data or who knowingly introduces, directly or indirectly, a  
13 computer contaminant into any computer, computer program or computer network which results  
14 in a loss of value of property or computer services, is guilty of larceny of the value of the property  
15 or services so lost.

**§61-3C-7. Alteration, destruction, etc., of computer equipment. Disruption of computer services.**

1 ~~(a) Misdemeanor offenses. -- Any person who knowingly, willfully and without~~  
2 ~~authorization, directly or indirectly, tampers with, deletes, alters, damages or destroys or attempts~~  
3 ~~to tamper with, delete, alter, damage or destroy any computer, computer network, computer~~  
4 ~~software, computer resources, computer program or computer data or who knowingly introduces,~~  
5 ~~directly or indirectly, a computer contaminant into any computer, computer program or computer~~  
6 ~~network which results in a loss of value of property or computer services up to \$1,000, is guilty of~~  
7 ~~a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in~~  
8 ~~the county or regional jail not more than six months, or both.~~

9 ~~(b) Felony offenses. -- Any person who knowingly, willfully and without authorization,~~  
10 ~~directly or indirectly, damages or destroys or attempts to damage or destroy any computer,~~  
11 ~~computer network, computer software, computer resources, computer program or computer data~~  
12 ~~by knowingly introducing, directly or indirectly, a computer contaminant into any computer,~~  
13 ~~computer program or computer network which results in a loss of value of property or computer~~  
14 ~~services more than \$1,000 is guilty of a felony and, upon conviction thereof, shall be fined not~~  
15 ~~less than \$200 and not more than \$10,000 or confined in a state correctional facility not more than~~  
16 ~~ten years, or both, or, in the discretion of the court, be fined not less than \$200 nor more than~~

17 ~~\$1,000 and confined in the county or regional jail not more than one year.~~

18 (a) Any person who knowingly, willfully and without authorization, directly or indirectly,  
 19 disrupts or degrades or causes the disruption or degradation of computer services or denies or  
 20 causes the denial of computer services to an authorized recipient or user of such computer  
 21 services, is guilty of a Class VI Felony:

22 (b) If such act results in a serious risk of bodily injury or death to any person, or in such  
 23 bodily injury or death, the person is guilty of a Class IV Felony.

**~~§61-3C-8. Disruption of computer services.~~ Unauthorized possession of computer information, etc.**

1 ~~Any person who knowingly, willfully and without authorization, directly or indirectly,~~  
 2 ~~disrupts or degrades or causes the disruption or degradation of computer services or denies or~~  
 3 ~~causes the denial of computer services to an authorized recipient or user of such computer~~  
 4 ~~services, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less~~  
 5 ~~than \$200 nor more than \$1,000 or confined in the county jail not more than one year, or both.~~  
 6 Any person who knowingly, willfully and without authorization, possesses any computer data,  
 7 computer software, computer supplies or a computer program which he or she knows or  
 8 reasonably should know was obtained in violation of any section of this article is guilty of a Class  
 9 III misdemeanor.

**~~§61-3C-9. Unauthorized possession of computer information, etc.~~ Disclosure of computer security information.**

1 ~~Any person who knowingly, willfully and without authorization, possesses any computer~~  
 2 ~~data, computer software, computer supplies or a computer program which he or she knows or~~  
 3 ~~reasonably should know was obtained in violation of any section of this article shall be guilty of a~~  
 4 ~~misdemeanor, and, upon conviction thereof, shall be fined not less than \$200 nor more than~~  
 5 ~~\$1,000 or confined in the county jail for not more than one year, or both.~~

6 Any person who knowingly, willfully and without authorization discloses a password,

7 identifying code, personal identification number or other confidential information about a computer  
8 security system to another person is guilty of a Class VI felony.

**§61-3C-10. Disclosure of computer security information. Obtaining confidential public information.**

1 ~~Any person who knowingly, willfully and without authorization discloses a password,~~  
2 ~~identifying code, personal identification number or other confidential information about a computer~~  
3 ~~security system to another person shall be guilty of a misdemeanor, and, upon conviction thereof,~~  
4 ~~shall be fined not more than \$500 or confined in the county jail for not more than six months, or~~  
5 ~~both.~~

6 (a) Any person who knowingly, willfully and without authorization accesses or causes to  
7 be accessed any computer or computer network and thereby obtains information filed by any  
8 person with the state or any county or municipality which is required by law to be kept confidential  
9 is guilty of a Class VI felony.

10 (b) Any person who knowingly, willfully and without authorization accesses or causes to  
11 be accessed any computer or computer network with the intent to cause harm to another, whether  
12 physical, financial, or reputational, and thereby obtains information filed by any person with the  
13 state or any county or municipality which is required by law to be kept confidential is guilty of a  
14 Class V felony.

**§61-3C-11. Obtaining confidential public information. Computer invasion of privacy.**

1 ~~Any person who knowingly, willfully and without authorization accesses or causes to be~~  
2 ~~accessed any computer or computer network and thereby obtains information filed by any person~~  
3 ~~with the state or any county or municipality which is required by law to be kept confidential shall~~  
4 ~~be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$500 or~~  
5 ~~confined in the county jail not more than six months, or both.~~

6 (a) Any person who knowingly, willfully and without authorization accesses a computer or  
7 computer network and examines any employment, salary, credit or any other financial or personal

8 information relating to any other person, after the time at which the offender knows or reasonably  
9 should know that he or she is without authorization to view the information displayed, is guilty of  
10 a Class I misdemeanor.

11 Any person who knowingly, willfully and without authorization accesses a computer or  
12 computer network with the intent to cause harm to another, whether physical, financial, or  
13 reputational, and examines any employment, salary, credit or any other financial or personal  
14 information relating to any other person, after the time at which the offender knows or reasonably  
15 should know that he or she is without authorization to view the information displayed, is guilty of  
16 a Class VI felony.

**§61-3C-12. Computer invasion of privacy. Fraud and related activity in connection with**  
**access devices.**

1 ~~Any person who knowingly, willfully and without authorization accesses a computer or~~  
2 ~~computer network and examines any employment, salary, credit or any other financial or personal~~  
3 ~~information relating to any other person, after the time at which the offender knows or reasonably~~  
4 ~~should know that he or she is without authorization to view the information displayed, shall be~~  
5 ~~guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$500 or~~  
6 ~~confined in the county jail for not more than six months, or both.~~

7 (a) As used in this section, the following terms shall have the following meanings:

8 “Access device” means any card, plate, code, account number, or other means of account  
9 access that can be used, alone or in conjunction with another access device, to obtain money,  
10 goods, services, or any other thing of value, that can be used to initiate a transfer of funds (other  
11 than a transfer originated solely by paper instrument), or that can be used to initiate a transfer of  
12 any other thing of value;

13 “Counterfeit access device” means any access device that is counterfeit, fictitious, altered,  
14 or forged, or an identifiable component of an access device or a counterfeit access device;

15 “Unauthorized access device” means any access device that is lost, stolen, expired,

16 revoked, canceled, or obtained without authority;

17 “Produce” includes design, alter, authenticate, duplicate, or assemble;

18 “Traffic” means transfer, or otherwise dispose of, to another, or obtain control of with intent  
19 to transfer or dispose of.

20 (b) Any person who knowingly and willfully possesses any counterfeit or unauthorized  
21 access device is guilty of a Class II misdemeanor.

22 (c) (1) Any person who knowingly, willfully and with intent to defraud uses a counterfeit or  
23 unauthorized access device is guilty of the larceny of the value of the money, goods, services,  
24 funds, or any other thing of value so obtained;

25 (2) For purposes of this section, the value of the use of said access device, whether  
26 counterfeit or unauthorized, shall be calculated in the aggregate rather than for each individual  
27 occurrence.

28 (d) Any person who knowingly, willfully and with intent to defraud possesses a counterfeit  
29 or unauthorized access device or who knowingly, willfully and with intent to defraud, produces or  
30 traffics in any counterfeit or unauthorized access device is guilty of a Class VI felony.

31 (e) This section may not prohibit any lawfully authorized investigative or protective activity  
32 of any state, county or municipal law-enforcement agency.

**§61-3C-13. Fraud and related activity in connection with access devices. Endangering**  
**public safety.**

1 ~~(a) As used in this section, the following terms shall have the following meanings:~~

2 ~~(1) “Access device” means any card, plate, code, account number, or other means of~~  
3 ~~account access that can be used, alone or in conjunction with another access device, to obtain~~  
4 ~~money, goods, services, or any other thing of value, or that can be used to initiate a transfer of~~  
5 ~~funds (other than a transfer originated solely by paper instrument);~~

6 ~~(2) “Counterfeit access device” means any access device that is counterfeit, fictitious,~~  
7 ~~altered, or forged, or an identifiable component of an access device or a counterfeit access device;~~

8 ~~(3) "Unauthorized access device" means any access device that is lost, stolen, expired,~~  
9 ~~revoked, canceled, or obtained without authority;~~

10 ~~(4) "Produce" includes design, alter, authenticate, duplicate, or assemble;~~

11 ~~(5) "Traffic" means transfer, or otherwise dispose of, to another, or obtain control of with~~  
12 ~~intent to transfer or dispose of.~~

13 ~~(b) Any person who knowingly and willfully possesses any counterfeit or unauthorized~~  
14 ~~access device shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not~~  
15 ~~more than \$1,000 or confined in the county jail for not more than six months, or both.~~

16 ~~(c) Any person who knowingly, willfully and with intent to defraud possesses a counterfeit~~  
17 ~~or unauthorized access device or who knowingly, willfully and with intent to defraud, uses,~~  
18 ~~produces or traffics in any counterfeit or unauthorized access device shall be guilty of a felony,~~  
19 ~~and, upon conviction thereof, shall be fined not more than \$10,000 or imprisoned in the~~  
20 ~~penitentiary not more than ten years, or both.~~

21 ~~(d) This section shall not prohibit any lawfully authorized investigative or protective activity~~  
22 ~~of any state, county or municipal law enforcement agency.~~

23 Any person who accesses a computer or computer network and knowingly, willfully and  
24 without authorization (a) interrupts or impairs the providing of services by any private or public  
25 utility; (b) interrupts or impairs the providing of any medical services; (c) interrupts or impairs the  
26 providing of services by any state, county or local government agency, public carrier or public  
27 communication service; or otherwise endangers public safety is guilty of a Class III felony.

**~~§61-3C-14. Endangering public safety. Obscene, anonymous, harassing, and threatening~~**  
**~~communications by computer, cell phones and electronic communication devices;~~**  
**~~penalty.~~**

1 ~~Any person who accesses a computer or computer network and knowingly, willfully and~~  
2 ~~without authorization (a) interrupts or impairs the providing of services by any private or public~~  
3 ~~utility; (b) interrupts or impairs the providing of any medical services; (c) interrupts or impairs the~~

4 ~~providing of services by any state, county or local government agency, public carrier or public~~  
5 ~~communication service; or otherwise endangers public safety shall be guilty of a felony, and, upon~~  
6 ~~conviction thereof, shall be fined not more than \$50,000 or imprisoned not more than twenty years,~~  
7 ~~or both.~~

8 (a) It is unlawful for any person, with the intent to harass or abuse another person, to use  
9 a computer, mobile phone, personal digital assistant, or other electronic communication device  
10 to:

11 (1) Make contact with another person without disclosing his or her identity with the intent  
12 to harass or abuse;

13 (2) Make contact with a person after being requested by the person to desist from  
14 contacting them: *Provided*, That a communication made by a lender or debt collector to a  
15 consumer, regarding an overdue debt of the consumer that does not violate Chapter 46A of this  
16 code, does not violate this subsection;

17 (3) Threaten to commit a crime against any person or property; or

18 (4) Cause obscene material to be delivered or transmitted to a specific person after being  
19 requested to desist from sending such material.

20 (b) For purposes of this section:

21 (1) "Electronic communication device" means and includes a telephone, wireless phone,  
22 computer, pager or any other electronic or wireless device which is capable of transmitting a  
23 document, image, voice, e-mail or text message using such device in an electronic, digital or  
24 analog form from one person or location so it may be viewed or received by another person or  
25 persons at other locations.

26 (2) "Use of a computer, mobile phone, personal digital assistant or other electronic  
27 communication device" includes, but is not limited to, the transmission of text messages,  
28 electronic mail, photographs, videos, images or other nonvoice data by means of an electronic  
29 communication system, and includes the transmission of such data, documents, messages and

30 images to another's computer, e-mail account, mobile phone, personal digital assistant or other  
 31 electronic communication device.

32 (3) "Obscene material" means material that:

33 (A) An average person, applying contemporary adult community standards, would find,  
 34 taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or  
 35 is pandered to a prurient interest;

36 (B) An average person, applying contemporary adult community standards, would find,  
 37 depicts or describes, in a patently offensive way, sexually explicit conduct consisting of an ultimate  
 38 sexual act, normal or perverted, actual or simulated, an excretory function, masturbation, lewd  
 39 exhibition of the genitals, or sadomasochistic sexual abuse; and

40 (C) A reasonable person would find, taken as a whole, lacks literary, artistic, political, or  
 41 scientific value.

42 (c) It is unlawful for any person to knowingly permit a computer, mobile phone or personal  
 43 digital assistant or other electronic communication device under his or her control to be used for  
 44 any purpose prohibited by this section.

45 (d) Any offense committed under this section may be determined to have occurred at the  
 46 place at which the contact originated or the place at which the contact was received or intended  
 47 to be received.

48 (e) Any person who violates a provision of this section is guilty of a Class II misdemeanor.  
 49 For a second or subsequent offense, the person is guilty of a Class I misdemeanor.

**§61-3C-14a. Obscene, anonymous, harassing, and threatening communications by  
 computer, cell phones and electronic communication devices; penalty.**

1 [Repealed]

**§61-3C-14b. Soliciting, etc. a minor via computer; soliciting a minor and traveling to  
 engage the minor in prohibited sexual activity; penalties.**

1 [Repealed]

**§61-3C-14c. Cyberbullying or specific acts of electronic harassment of minors; definitions; penalties; exceptions.**

2 [Repealed]

**§61-3C-15. ~~Computer as instrument of forgery. Soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; penalties.~~**

1 ~~The creation, alteration or deletion of any computer data contained in any computer or~~  
2 ~~computer network, which if done on a tangible document or instrument would constitute forgery~~  
3 ~~under section five, article four, chapter sixty-one of this code will also be deemed to be forgery.~~  
4 ~~The absence of a tangible writing directly created or altered by the offender shall not be a defense~~  
5 ~~to any crime set forth in section five, article four, chapter sixty-one if a creation, alteration or~~  
6 ~~deletion of computer data was involved in lieu of a tangible document or instrument.~~

7 (a) Any person over the age of 18, who knowingly uses a computer to solicit, entice,  
8 seduce or lure, or attempt to solicit, entice, seduce or lure, a minor known or believed to be at  
9 least four years younger than the person using the computer or a person he or she believes to be  
10 a minor, in order to engage in any illegal act proscribed by the provisions of §§61-8-1 et seq.,  
11 §§61-8B-1 et seq., §§61-8C-1 et seq., or §§61-8D-1 et seq., or any felony offense under §60A-4-  
12 401, is guilty of a Class V felony.

13 (b) Any person over the age of 18 who uses a computer in the manner proscribed by the  
14 provisions of subsection (a) of this section and who additionally engages in any overt act designed  
15 to bring himself or herself into the minor's, or the person believed to be a minor's, physical  
16 presence with the intent to engage in any sexual activity or conduct with such a minor that is  
17 prohibited by law, is guilty of a Class III felony: *Provided*, That subsection (a) shall be considered  
18 a lesser included offense to that created by this subsection.

**§61-3C-16. Civil relief; damages. Cyberbullying or specific acts of electronic harassment of minors; definitions; penalties; exceptions.**

1 ~~(a) Any person whose property or person is injured by reason of a violation of any provision~~  
2 ~~of this article may sue therefor in circuit court and may be entitled to recover for each violation:~~

3 ~~(1) Compensatory damages;~~

4 ~~(2) Punitive damages; and~~

5 ~~(3) Such other relief, including injunctive relief, as the court may deem appropriate.~~

6 ~~Without limiting the generality of the term, "damages" shall include loss of profits.~~

7 ~~(b) At the request of any party to an action brought pursuant to this section, the court may,~~  
8 ~~in its discretion, conduct all legal proceedings in such a manner as to protect the secrecy and~~  
9 ~~security of the computer network, computer data, computer program or computer software~~  
10 ~~involved in order to prevent any possible recurrence of the same or a similar act by another person~~  
11 ~~or to protect any trade secret or confidential information of any person. For the purposes of this~~  
12 ~~section "trade secret" means the whole or any portion or phase of any scientific or technological~~  
13 ~~information, design, process, procedure or formula or improvement which is secret and of value.~~  
14 ~~A trade secret shall be presumed to be secret when the owner thereof takes measures to prevent~~  
15 ~~it from becoming available to persons other than those authorized by the owner to have access~~  
16 ~~thereto for a limited purpose.~~

17 ~~(c) The provisions of this section shall not be construed to limit any person's right to pursue~~  
18 ~~any additional civil remedy otherwise allowed by law.~~

19 ~~(d) A civil action under this section must be commenced before the earlier of: (1) Five~~  
20 ~~years after the last act in the course of conduct constituting a violation of this article; or (2) two~~  
21 ~~years after the plaintiff discovers or reasonably should have discovered the last act in the course~~  
22 ~~of conduct constituting a violation of this article.~~

23 (a) It is unlawful for a person to use a computer or computer network knowingly and  
24 intentionally, as defined in §61-3C-3 of this code, to engage in conduct with the intent to harass,  
25 intimidate, or bully a minor, including, but not limited to:

26 (1) Posting, disseminating, or encouraging others to post or disseminate private, personal,

27 or sexual information pertaining to a minor on the Internet; or

28 (2) Posting obscene material, as defined in §61-3C-14a of this code, in a real or doctored  
 29 image of a minor on the Internet;

30 (b) For the purposes of this section:

31 (1) "Harass, intimidate or bully" means any intentional gesture, or any intentional  
 32 electronic, written, verbal, or physical act, communication, transmission, or threat that:

33 (A) A reasonable person under the circumstances should know the act will have the effect  
 34 of any one or more of the following:

35 (i) Physically harming a minor;

36 (ii) Damaging a minor's property;

37 (iii) Placing a minor in reasonable fear of harm to his or her person; or

38 (iv) Placing a minor in reasonable fear of damage to his or her property; or

39 (B) Is sufficiently severe, persistent, or pervasive that it creates an intimidating,  
 40 threatening, or emotionally abusive environment for a minor.

41 (2) "Minor" means an individual under the age of 18 years old.

42 (c) This section does not apply to a peaceful activity intended to:

43 (i) Express a political view; or

44 (ii) Provide information to others with no intent to harass, intimidate, or bully.

45 (d) Any person who violates this section is guilty of a Class I misdemeanor.

**§61-3C-17. Defenses to criminal prosecution. Computer as instrument of forgery.**

1 ~~(a) In any criminal prosecution under this article, it shall be a defense that:~~

2 ~~(1) The defendant had reasonable grounds to believe that he or she had authority to~~  
 3 ~~access or could not have reasonably known he or she did not have authority to access the~~  
 4 ~~computer, computer network, computer data, computer program or computer software in~~  
 5 ~~question; or,~~

6 ~~(2) The defendant had reasonable grounds to believe that he or she had the right to alter~~

7 ~~or destroy the computer data, computer software or computer program in question; or,~~

8 ~~(3) The defendant had reasonable grounds to believe that he or she had the right to copy,~~  
9 ~~reproduce, duplicate or disclose the computer data, computer program, computer security system~~  
10 ~~information or computer software in question.~~

11 ~~(b) Nothing in this section shall be construed to limit any defense available to a person~~  
12 ~~charged with a violation of this article.~~

13 The creation, alteration or deletion of any computer data contained in any computer or  
14 computer network, which if done on a tangible document or instrument would constitute forgery  
15 under §61-4-5 of this code shall also be considered to be forgery. The absence of a tangible  
16 writing directly created or altered by the offender may not be a defense to any crime set forth in  
17 §61-4-5 of this code if a creation, alteration, or deletion of computer data was involved in lieu of a  
18 tangible document or instrument.

**§61-3C-18. Venue. Civil relief; damages.**

1 ~~For the purpose of criminal and civil venue under this article, any violation of this article~~  
2 ~~shall be considered to have been committed:~~

3 ~~(1) In any county in which any act was performed in furtherance of any course of conduct~~  
4 ~~which violates this article;~~

5 ~~(2) In the county of the principal place of business in this state of the aggrieved owner of~~  
6 ~~the computer, computer data, computer program, computer software or computer network, or any~~  
7 ~~part thereof;~~

8 ~~(3) In any county in which any violator had control or possession of any proceeds of the~~  
9 ~~violation or any books, records, documentation, property, financial instrument, computer data,~~  
10 ~~computer software, computer program, or other material or objects which were used in~~  
11 ~~furtherance of or obtained as a result of the violation;~~

12 ~~(4) In any county from which, to which, or through which any access to a computer or~~  
13 ~~computer network was made, whether by wires, electromagnetic waves, microwaves or any other~~

14 ~~means of communication; and~~

15 ~~(5) In the county in which the aggrieved owner or the defendant resides or either of them~~  
16 ~~maintains a place of business.~~

17 (a) Any person whose property or person is injured by reason of a violation of any provision  
18 of this article may sue therefor in circuit court and may be entitled to recover for each violation:

19 (1) Compensatory damages;

20 (2) Punitive damages; and

21 (3) Such other relief, including injunctive relief, as the court may consider appropriate.

22 Without limiting the generality of the term, “damages” shall include loss of profits.

23 (b) At the request of any party to an action brought pursuant to this section, the court may  
24 conduct all legal proceedings in such a manner as to protect the secrecy and security of the  
25 computer network, computer data, computer program or computer software involved in order to  
26 prevent any possible recurrence of the same or a similar act by another person or to protect any  
27 trade secret or confidential information of any person. For the purposes of this section “trade  
28 secret” means the whole or any portion or phase of any scientific or technological information,  
29 design, process, procedure or formula or improvement which is secret and of value. A trade secret  
30 is presumed to be secret when the owner thereof takes measures to prevent it from becoming  
31 available to persons other than those authorized by the owner to have access thereto for a limited  
32 purpose.

33 (c) The provisions of this section may not be construed to limit any person’s right to pursue  
34 any additional civil remedy otherwise allowed by law.

35 (d) A civil action under this section shall be commenced before the earlier of: (1) Five  
36 years after the last act in the course of conduct constituting a violation of this article; or (2) two  
37 years after the plaintiff discovers or reasonably should have discovered the last act in the course  
38 of conduct constituting a violation of this article.

**§61-3C-19. Prosecution under other criminal statutes not prohibited. Defenses to criminal**

**prosecution.**

1 Criminal prosecution pursuant to this article shall not prevent prosecution pursuant to any  
2 other provision of law.

3 (a) In any criminal prosecution under this article, it is a defense that:

4 (1) The defendant had reasonable grounds to believe that he or she had authority to  
5 access or could not have reasonably known he or she did not have authority to access the  
6 computer, computer network, computer data, computer program or computer software in  
7 question; or,

8 (2) The defendant had reasonable grounds to believe that he or she had the right to alter  
9 or destroy the computer data, computer software or computer program in question; or,

10 (3) The defendant had reasonable grounds to believe that he or she had the right to copy,  
11 reproduce, duplicate, or disclose the computer data, computer program, computer security  
12 system information or computer software in question.

13 (b) Nothing in this section may be construed to limit any defense available to a person  
14 charged with a violation of this article.

**§61-3C-20. Personal jurisdiction. Venue.**

1 Any person who violates any provision of this article and, in doing so, accesses, permits  
2 access to, causes access to or attempts to access a computer, computer network, computer data,  
3 computer resources, computer software or computer program which is located, in whole or in part,  
4 within this state, or passes through this state in transit, shall be subject to criminal prosecution  
5 and punishment in this state and to the civil jurisdiction of the courts of this state.

1 For the purpose of criminal and civil venue under this article, any violation of this article  
2 shall be considered to have been committed:

3 (1) In any county in which any act was performed in furtherance of any course of conduct  
4 which violates this article;

5 (2) In the county of the principal place of business in this state of the aggrieved owner of

6 the computer, computer data, computer program, computer software or computer network, or any  
 7 part thereof;

8 (3) In any county in which any violator had control or possession of any proceeds of the  
 9 violation or any books, records, documentation, property, financial instrument, computer data,  
 10 computer software, computer program, or other material or objects which were used in  
 11 furtherance of or obtained as a result of the violation;

12 (4) In any county from which, to which, or through which any access to a computer or  
 13 computer network was made, whether by wires, electromagnetic waves, microwaves, or any other  
 14 means of communication; and

15 (5) In the county in which the aggrieved owner or the defendant resides or either of them  
 16 maintains a place of business.

**§61-3C-21. Severability. Prosecution under other criminal statutes not prohibited.**

1 ~~If any provision of this article or the application thereof to any person or circumstance is~~  
 2 ~~held invalid, such invalidity shall not affect any other provisions or applications of this article which~~  
 3 ~~can be given effect without the invalid provision or application, and to that end the provisions of~~  
 4 ~~this article are declared to be severable.~~

5 Criminal prosecution pursuant to this article may not prevent prosecution pursuant to any  
 6 other provision of law.

**§61-3C-22. Personal jurisdiction.**

1 Any person who violates any provision of this article and, in doing so, accesses, permits  
 2 access to, causes access to or attempts to access a computer, computer network, computer data,  
 3 computer resources, computer software or computer program, which is located, in whole or in  
 4 part, within this state, or passes through this state in transit, is subject to criminal prosecution and  
 5 punishment in this state and to the civil jurisdiction of the courts of this state.

**§61-3C-23. Severability.**

1 If any provision of this article or the application thereof to any person or circumstance is

2 held invalid, such invalidity may not affect any other provisions or applications of this article which  
3 can be given effect without the invalid provision or application, and to that end the provisions of  
4 this article are declared to be severable.

### **ARTICLE 3D. THEFT OF CABLE TELEVISION SERVICES.**

#### **§61-3D-2. Acquisition of cable television services.**

1 (a) A person who acquires cable television services for himself or herself or another,  
2 whether through his or her own efforts or with the assistance of another, or both, by:

3 (1) Making or maintaining any unauthorized connection, whether physically, electrically,  
4 or inductively, to a distribution or transmission line;

5 (2) Attaching or maintaining the attachment of any unauthorized device to any cable, wire,  
6 or other component of a cable system or to a television receiving set connected to a cable system;

7 (3) Making or maintaining any unauthorized modification or alteration to any device  
8 installed by a cable system operator; or

9 (4) Knowingly permits another person to enter upon his or her property for the purpose of  
10 securing cable service in an unauthorized manner as described in subdivision (1), (2) or (3) of  
11 this subsection ~~shall be~~ is guilty of a misdemeanor and, upon conviction, shall be punished in  
12 accordance with subsection (c) of this section.

13 (b) A person who subscribes to and receives cable television services through an  
14 authorized connection of a television receiving set at his or her dwelling and, within his or her  
15 dwelling, makes an authorized or an unauthorized connection of an additional television receiving  
16 set or sets or audio system which receives cable television service through such authorized  
17 connection, ~~shall~~ is not be guilty of a misdemeanor under subsection (a) of this section.

18 (c) Any person convicted of a misdemeanor under subsection (a) of this section shall be  
19 subject to the following penalties:

20 (1) Upon a first conviction under this section, the defendant ~~shall be~~ is guilty of a  
21 ~~misdemeanor~~ petty offense and fined not less than \$100, nor more than \$250.

22           (2) Upon a second conviction under this section, the defendant ~~shall be fined not less than~~  
23 ~~\$250, nor more than \$500, or imprisoned in the county jail not more than thirty days, or both fined~~  
24 ~~and imprisoned~~ is guilty of a Class III misdemeanor.

25           (3) Upon any subsequent conviction in excess of a second conviction under this section,  
26 the defendant shall be ~~fined not less than \$500, nor more than \$1,000, or imprisoned in the county~~  
27 ~~jail not less than thirty days nor more than sixty days, or both fined and imprisoned~~ is guilty of a  
28 Class II misdemeanor.

29           Notwithstanding the ~~provisions of~~ §61-11A-4 or section §50-3-2a of this code, the  
30 magistrate or court may order restitution not to exceed the value of unauthorized cable services  
31 received.

### **§61-3D-3. Sale or transfer of the device or plan intended for acquisition or diversion.**

1           (a) A person who sells, gives, or otherwise transfers to another or offers, advertises or  
2 exposes for sale to another any device, mechanism, tool or printed circuit, or any kit, plan or  
3 instructional procedure for the making of such device, mechanism, tool or printed circuit, with the  
4 knowledge that another will acquire cable television services in violation of this article, ~~shall be~~ is  
5 guilty of a misdemeanor and, shall be punishable in accordance with subsection (b) of this section.

6           (b) (1) Upon a first conviction under this section, the defendant ~~shall be fined not less than~~  
7 ~~\$250, nor more than \$500~~ is guilty of a petty offense and fined not less than \$100, nor more than  
8 \$250.

9           (2) Upon a second conviction under this section, the defendant ~~shall be fined not less than~~  
10 ~~\$500, nor more than \$1,000, or imprisoned in the county jail not more than thirty days, or both~~  
11 ~~fined and imprisoned~~ is guilty of a Class III misdemeanor.

12           (3) Upon any subsequent conviction in excess of a second conviction under this section,  
13 the defendant ~~shall be fined not less than \$500, nor more than \$1,000, or imprisoned in the county~~  
14 ~~jail not less than sixty days, nor more than one year~~ is guilty of a Class II misdemeanor.

### **ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.**

**§61-3E-1. Definitions.**

1 As used in this article, unless the context otherwise requires:

2 “Bodily injury” means injury that causes substantial physical pain, illness, or any  
3 impairment of physical condition

4 “Destructive device” means any bomb, grenade, mine, rocket, missile, pipe bomb or  
5 similar device containing an explosive, incendiary, explosive gas or expanding gas which is  
6 designed or so constructed as to explode by such filler and is capable of causing bodily harm or  
7 property damage; any combination of parts, either designed or intended for use in converting any  
8 device into a destructive device and from which a destructive device may be readily assembled.

9 “Destructive device” does not include a firearm as such is defined in §61-7-2 of this code,  
10 or sparkling devices, novelties, toy caps, model rockets and their components or fireworks as  
11 these terms are defined in §29-3E-2 of this code, or high-power rockets and their components,  
12 as defined in this section.

13 “Explosive material” means any chemical compound, mechanical mixture or device that is  
14 commonly used or can be used for the purpose of producing an explosion and which contains  
15 any oxidizing and combustive units or other ingredients in such proportions, quantities, or  
16 packaging that an ignition by fire, by friction, by concussion, by percussion, by detonator or by  
17 any part of the compound or mixture may cause a sudden generation of highly heated gases.  
18 These materials include, but are not limited to, powders for blasting, high or low explosives,  
19 blasting materials, blasting agents, blasting emulsions, blasting fuses other than electric circuit  
20 breakers, detonators, blasting caps and other detonating agents and black or smokeless powders  
21 not manufactured or used for lawful sporting purposes. Also included are all explosive materials  
22 listed annually by the office of the State Fire Marshal and published in the State Register, said  
23 publication being hereby mandated.

24 “High power rocket” means the term as defined in National Fire Protection Association  
25 Standard 1127, “Code for High Power Rocketry.”

26 “Hoax bomb” means any device or object that by its design, construction, content, or  
27 characteristics appears to be, or is represented to be or to contain a destructive device, explosive  
28 material or incendiary device as defined in this section, but is, in fact, an inoperative facsimile or  
29 imitation of such a destructive device, explosive material or incendiary device.

30 “Incendiary device” means a container containing gasoline, kerosene, fuel oil, or derivative  
31 thereof, or other flammable or combustible material, having a wick or other substance or device  
32 which, if set or ignited, is capable of igniting such gasoline, kerosene, fuel oil, or derivative thereof,  
33 or other flammable or combustible material: *Provided*, That no similar device commercially  
34 manufactured and used solely for the purpose of illumination shall be ~~deemed~~ considered to be  
35 an incendiary device.

36 “Legal authority” means that right as expressly stated by statute or law.

37 “Model rocket” means the term as defined in National Fire Protection Association Standard  
38 1122, “Code for Model Rocketry.”

39 “Person” means an individual, corporation, company, association, firm, partnership,  
40 society or joint stock company.

41 “Serious bodily injury” means bodily injury that creates a substantial risk of death, that  
42 causes serious or prolonged disfigurement, prolonged impairment of health, prolonged loss or  
43 impairment of the function of any bodily organ, loss of pregnancy, or the morbidity or mortality  
44 occurring because of a preterm delivery.

45 “Storage magazine” is defined to mean any building or structure, other than an explosives  
46 manufacturing building, approved by the legal authority for the storage of explosive materials.

**§61-3E-3. Illegal possession of destructive devices, explosive materials or incendiary  
devices; penalty.**

47 Any person who possesses or manufactures any explosive material without first obtaining  
48 a permit to use explosives from the office of the state Fire Marshal or who possesses or  
49 manufacturers any destructive device or incendiary device ~~shall be~~ is guilty of a Class VI felony

50 ~~and, upon conviction thereof, shall be committed to the custody of the Division of Corrections for~~  
51 ~~not less than one nor more than ten years or fined not more than \$5,000, or both.~~

**§61-3E-4. Criminal use of destructive device, explosive material, or incendiary device; penalty.**

1 Any person who unlawfully and intentionally damages the property of another or attempts  
2 to damage the property of another by the use of a destructive device, explosive material or  
3 incendiary device shall be is guilty of a Class V felony ~~and, upon conviction thereof, shall be~~  
4 ~~committed to the custody of the Division of Corrections for not less than two nor more than ten~~  
5 ~~years, or fined not more than \$10,000, or both.~~

**§61-3E-5. Causing accidental or intentional death or injury; penalties.**

1 (a) Any person who violates the provisions of this article which violation causes bodily  
2 injury to any person shall be is guilty of a Class V felony ~~and, upon conviction thereof, shall be~~  
3 ~~committed to the custody of the Division of Corrections for not less than two nor more than ten~~  
4 ~~years, or fined not more than \$5,000, or both; if the violation was undertaken with the intent to~~  
5 ~~cause bodily injury or death, that person is guilty of a Class IV felony.~~

6 (b) Any person who violates the provisions of this article which violation causes serious  
7 bodily injury to any person shall be is guilty of a Class IV felony ~~and, upon conviction thereof, shall~~  
8 ~~be committed to the custody of the Division of Corrections for not less than three nor more than~~  
9 ~~fifteen years, or fined not more than \$10,000, or both; if the violation was undertaken with the~~  
10 ~~intent to cause bodily injury or death, that person is guilty of a Class III felony.~~

11 (c) Any person who violates the provisions of this article which violation causes the death  
12 of any person shall be is guilty of a Class III felony ~~and, upon conviction thereof, shall be~~  
13 ~~committed to the custody of the Division of Corrections for a definite term of years of not less than~~  
14 ~~ten years nor more than forty years; if the violation was undertaken with the intent to cause bodily~~  
15 ~~injury or death, that person is guilty of a Class II felony.~~

16 No person sentenced to a period of imprisonment pursuant to the provisions of this

17 subsection ~~shall~~ may be eligible for parole prior to having served a minimum of 10 years.

**§61-3E-6. Causing death or injury to an explosives detection animal; penalty.**

1 Any person who violates the provisions of this article which violation causes death, serious  
2 or debilitating bodily injury to an explosives detection animal owned or used by a law-enforcement  
3 agency, ~~shall be~~ is guilty of a Class VI felony and, ~~upon conviction thereof, be committed to the~~  
4 ~~custody of the Division of Corrections for not less than one year nor more than five years or fined~~  
5 ~~not more than \$5,000 or both; if the violation was undertaken with the intent to cause bodily injury~~  
6 or death to the animal, that person is guilty of a Class V felony.

7 Any person convicted of a violation of this section shall be ordered to make restitution to  
8 the law-enforcement agency, the Department of Military Affairs and Public Safety or to the State  
9 Fire Marshal or other fire prevention or investigation department or agency owning the animal for  
10 any veterinary bills, and replacement costs of any disabled or killed animal.

**§61-3E-7. Manufacture, purchase, sale, advertising for sale, transporting or possession or  
use of a hoax bomb; possession or use in commission of a felony; penalty.**

1 (a) Any person who knowingly manufactures, purchases, sells, advertises for sale,  
2 transports, or possesses a hoax bomb with intent to violate any provision of this code ~~shall be~~ is  
3 guilty of a Class I misdemeanor. ~~Any person convicted of a violation of this section shall be~~  
4 ~~incarcerated in a county or regional jail for not less than six months nor more than one year, or~~  
5 ~~fined \$5,000, or both.~~

6 (b) Notwithstanding the provisions of subsection (a) of this section, any person who  
7 possesses or uses a hoax bomb to commit or attempt to commit any felony ~~shall be~~ is guilty of a  
8 Class VI felony and, ~~upon conviction thereof, shall be committed to the custody of the Division of~~  
9 ~~Corrections for not less than one nor more than ten years, or fined not more than \$10,000, or~~  
10 ~~both.~~

**§61-3E-8. Theft of explosive material from storage magazines or buildings; penalty.**

1 Any person who breaks and enters or shall enter without breaking any storage magazine,

2 shop, office, storehouse, warehouse or any other building or out-house adjoining thereto, any  
3 railcar, boat, vessel or motor vehicle within the jurisdiction of any county within this state where  
4 explosive material is stored, with the intent to commit larceny of the explosive material ~~shall be~~ is  
5 guilty of a Class V felony and, ~~upon conviction thereof, shall be committed to the custody of the~~  
6 ~~Division of Corrections for not less than one nor more than ten years or fined not more than~~  
7 ~~\$10,000, or both.~~

**§61-3E-9. Receipt, possession, storage, sale, or transportation of stolen explosive material; penalty.**

1 Any person who receives, conceals, transports, ships, stores, barter, sells, or disposes  
2 of any explosive material knowing or have reason to know that such materials is stolen is guilty  
3 of a Class VI felony and, ~~upon conviction thereof, shall be committed to the custody of the Division~~  
4 ~~of Corrections for not less than one nor more than ten years or fined not more than \$10,000, or~~  
5 ~~both.~~

**§61-3E-10. Wanton endangerment involving destructive devices, explosive materials, or incendiary devices; penalty.**

1 Any person who wantonly performs any act with a destructive device, explosive material  
2 or incendiary device which creates substantial risk of death or serious bodily injury to another  
3 ~~shall be~~ is guilty of a Class V felony and, ~~upon conviction thereof, shall be committed to the~~  
4 ~~custody of the Division of Corrections for not less than two years nor more than ten years or fined~~  
5 ~~not more than \$10,000, or both.~~

**§61-3E-12. Contraband, seizure, forfeiture.**

1 (a) Any destructive device, explosive material, incendiary device, or hoax bomb  
2 possessed, involved in, used, or intended to be used in a violation of this article or any violation  
3 of any criminal law or regulation of this state are hereby declared to be contraband and any  
4 property interest therein shall be vested in the State of West Virginia. ~~Said~~ The contraband may  
5 be seized by the office of the state Fire Marshal or other law-enforcement agency conducting said

6 investigation and upon application to the circuit court of the county in which said contraband is  
7 seized be forfeited to the State of West Virginia for destruction or for training purposes by the  
8 office of the state Fire Marshal or other law-enforcement agency.

9 (b) The Legislature hereby finds and declares that the seizure and use of items under the  
10 provisions of this article is not contemplated to be a forfeiture as the same is used in section five,  
11 article XII of the Constitution of West Virginia and to the extent that the seizure and use may be  
12 found to be such a forfeiture, the Legislature hereby finds and declares that the proceeds from a  
13 seizure and use under this article is not part of net proceeds as the same is contemplated by  
14 section five, article XII of the Constitution of West Virginia.

**§61-3E-13. Legislative findings.**

1 [Repealed.]

**ARTICLE 3F. WORTHLESS CHECKS.**

**§61-3F-1. Obtaining property in return for worthless check; penalty.**

1 It is unlawful for any person, firm, or corporation to obtain any money, services, goods or  
2 other property or thing of value by means of a check, draft, or order for the payment of money or  
3 its equivalent upon any bank or other depository, knowing at the time of the making, drawing,  
4 issuing, uttering or delivering of the check, draft or order that there is not sufficient funds on  
5 deposit in or credit with such bank or other depository with which to pay the same upon  
6 presentation. The making, drawing, issuing, uttering or delivery of any such check, draft or order,  
7 for or on behalf of any corporation, or its name, by any officer or agent of the corporation, shall  
8 subject the officer or agent to the penalties of this section to the same extent as though the check,  
9 draft or order was his or her own personal act, when the agent or officer knows that the corporation  
10 does not have sufficient funds on deposit in or credit with the bank or depository from which the  
11 check, draft or order can legally be paid upon presentment.

12 This section may not apply to any check, draft, or order when the payee or holder knows  
13 or has been expressly notified prior to the acceptance of same or has reason to believe that the

14 drawer did not have on deposit or to his or her credit with the drawee sufficient funds to ensure  
15 payment as aforesaid, nor may this section apply to any postdated check, draft or order.

16 No prosecution may be confined to the provisions of this section by virtue of the fact that  
17 worthless checks, drafts, or orders may be employed in the commission of some other criminal  
18 act.

19 A person who violates the provisions of this section is guilty of the larceny of the amount  
20 of the check, draft, or order.

**§61-3F-2. Making, issuing, etc., worthless checks on a preexisting debt; penalty.**

1 (a) It is unlawful for any person, firm, or corporation to make, draw, issue, utter or deliver  
2 any check, draft or order for the payment of money or its equivalent on a preexisting debt upon  
3 any bank or other depository, knowing or having reason to know there is not sufficient funds on  
4 deposit in or credit with the bank or other depository with which to pay the check, draft or order  
5 upon presentation. The making, drawing, issuing, uttering, or delivering of any check, draft or  
6 order on a preexisting debt, for or on behalf of any corporation, or its name, by any officer or agent  
7 of the corporation, shall subject the officer or agent to the penalty of this section to the same  
8 extent as though the check, draft or order was his or her own personal act.

9 (b) This section may not apply to any check, draft or order when the payee or holder knows  
10 or has been expressly notified prior to the acceptance of same or has reason to believe that the  
11 drawer did not have on deposit or to his or her credit with the drawee sufficient funds to ensure  
12 payment as aforesaid, nor may this section apply to any postdated check, draft or order. This  
13 section may not apply when the insufficiency of funds or credit is caused by any adjustment to  
14 the drawer's account by the bank or other depository without notice to the drawer or is caused by  
15 the dishonoring of any check, draft or order deposited in the account unless there is knowledge  
16 or reason to believe that the check, draft or order would be dishonored.

17 (c) Any person violating the provisions of this section is guilty of a petty offense and, upon  
18 conviction thereof, shall be fined not more than \$200; and, upon a third or subsequent conviction

19 thereof, shall be convicted of a class III misdemeanor.

**§61-3F-3. Payment as defense.**

1 Payment of a dishonored check, draft, or order, made to the magistrate clerk within 10  
2 days after the notice mailed to the defendant pursuant to §61-3F-8 of this code, constitutes a  
3 complete defense or ground for dismissal of charges brought under §61-3F-1 or §61-3F-2 of this  
4 code.

**§61-3F-4. Reason for dishonor; duty of drawee.**

1 The drawee of any check, draft, or order, before refusing to pay the same to the holder  
2 thereof upon presentation, shall cause to be written, printed, or stamped in plain language thereon  
3 or attached thereto, the reason for drawee's dishonor or refusal to pay same. In all prosecutions  
4 under §61-3F-1 or §61-3F-2 of this code, the introduction in evidence of any unpaid and  
5 dishonored check, draft, or other written order, having the drawee's refusal to pay stamped or  
6 written thereon, or attached thereto, with the reason therefor as aforesaid shall be prima facie  
7 evidence of :

8 (a) The making or uttering of said check, draft or other written order, and the due  
9 presentation to the drawee for payment and the dishonor thereof, and that the same was properly  
10 dishonored for the reasons written, stamped, or attached by the drawee on such dishonored  
11 checks, drafts, or orders; and

12 (b) As against the maker or drawer thereof, of the withdrawing from deposit with the  
13 drawee named in the check, draft, or other written order, of the funds on deposit with such drawee  
14 necessary to ensure payment of said check, draft or other written order upon presentation within  
15 a reasonable time after negotiation; and

16 (c) The drawing, making, uttering, or delivering of a check, draft or written order with the  
17 knowledge of insufficient funds in or credit with such drawee.

**§61-3F-5. Prima facie evidence of knowledge; identity; penalty for providing false information.**

1       (a) In any prosecution under §61-3F-1 of this code, the making, drawing, uttering or  
2 delivery of a check, draft or order, the payment of which is refused by the drawee because of lack  
3 of funds or credit, shall be prima facie evidence that the drawer has knowledge at the time of  
4 making, drawing, issuing, uttering or delivering the check, draft or order that there is not sufficient  
5 funds or credit to pay the same, unless the check, draft or order is paid along with any charges or  
6 costs authorized by this article.

7       (b) In any prosecution under §61-3F-2 of this code, it shall constitute prima facie evidence  
8 of the identity of the drawer of a check, draft order if at the time of acceptance of the check, draft,  
9 or order there is obtained the following information: Name and residence, business or mailing  
10 address and either a valid motor vehicle operator's number or the drawer's home or work phone  
11 number or place of employment. This information may be recorded on the check, draft or order  
12 itself or may be retained on file by the payee and referred to on the check, draft, or order by  
13 identifying number or other similar means.

14       (c) Any person who provides false information when information is requested prior to  
15 accepting a check, draft or order either at the time the check, draft or order is presented or for the  
16 purpose of obtaining a check cashing identification card or similar check cashing privilege is guilty  
17 of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$200, or confined  
18 in jail not more than 30 days, or both fined and confined.

**§61-3F-6. Notice of dishonor by payee; service charge.**

1       The payee or holder of a check, draft or order which has been dishonored because of  
2 insufficient funds or credit may send notice thereof to the drawer of the check, draft, or order. The  
3 payee or holder of any dishonored check may impose a fee of up to \$25 per worthless check.  
4 This fee may not be imposed or collected after a complaint for warrant has been delivered to  
5 magistrate court. No payee or holder of a check, draft or order which has been dishonored  
6 because of insufficient funds or credit may incur any civil or criminal liability for the sending of a  
7 notice substantially in the form provided herein, other provisions of law notwithstanding. The form

8 of the notice shall be substantially as follows:

9 “You are hereby notified that a check, number ....., issued by you on (date of  
10 check), drawn upon (name of bank), and payable to ....., has been dishonored.  
11 Pursuant to West Virginia law, you have ten days from the date of this notice to tender payment  
12 of the full amount of the check plus a fee of \$..... (not to exceed \$25 a worthless check)  
13 to the undersigned at ..... You are further notified that in the event the above amount  
14 is timely paid in full you will not be subject to legal proceedings, civil or criminal.

15 Dated ....., 20....

16 .....

17 (Signed).”

18 The provisions of this section do not authorize the making of any other written or oral  
19 threats of prosecution to enforce or enhance the collection or honoring of the dishonored check,  
20 draft or order.

21 The holder or payee of any check, draft or order shall relinquish the check, draft, or order  
22 to the maker upon tender of the full amount due at any time before a complaint for warrant has  
23 been presented to magistrate court. If a complaint for warrant has been presented to magistrate  
24 court, payment may be made only through the court and any holder or payee unlawfully accepting  
25 payment after that time shall be liable for all costs which may be imposed by the magistrate court  
26 in the matter, including all costs which may have accrued by the time the magistrate court is  
27 notified of the payment.

**§61-3F-7. Manner of filing complaint for warrant; form.**

1 (A) Notwithstanding §62-1-1 of this code, a complaint for warrant for violations of §61-3F-  
2 1 or §61-3F-2 of this code need not be made upon oath before a magistrate but may be made  
3 upon oath before any magistrate court clerk or other court officer authorized to administer oaths  
4 or before a notary public in any county of the state and may be delivered by mail or otherwise to  
5 the magistrate court of the county wherein venue lies: *Provided*, That nothing in this section

6 changes the authority and responsibility of the prosecuting attorney to prosecute any person or  
7 persons for violations of §61-3F-1 or §61-3F-2 of this code.

8 (B) A complaint for warrant for violations of §61-3F-2 of this code shall be considered  
9 sufficient if it is in form substantially as follows:

10 “State of West Virginia

11 County of ....., to wit:

12 ....., upon oath complains that:

13 (a) Within one year past, on the ..... day of ....., 20..., in the county stated above,

14 ..... (?the maker”) unlawfully issued and delivered to ..... a check,

15 draft or order with the following words and figures:

16 ..... 20 .... No.....

17 .....

18 (Name of Bank)

19 Pay to the Order of ..... \$..... Dollars

20 For..... when the maker did not have funds on deposit in

21 or credit with this bank with which to pay the check, draft or order upon presentation against the

22 peace and dignity of the State of West Virginia. The complainant therefore prays a warrant issue

23 and that the maker be apprehended and held to answer the warrant and dealt with in relation

24 thereto according to the law.

25 (b) At the time the check, draft or order was delivered and before it was accepted there

26 was either on the check or on a record in the possession of the complainant the following

27 information regarding the identity of the maker:

28 (1) Name.....

29 (2) Residence address.....

30 (3) Business address.....

31 (4) Mailing address.....

32 (5) Motor vehicle operator’s number.....

33 (6) Home phone.....

34 (7) Work phone.....

35 (8) Place of employment.....

36 That since the time the check, draft or order was delivered the complainant has  
37 ascertained to the best of his or her knowledge and belief the following facts concerning the  
38 maker:

39 Full name .....

40 Home address .....

41 Home phone no..... Business phone no.....

42 Place of employment .....

43 Race ..... Sex ..... Height .....

44 Date of birth .....

45 Day Month Year

46 ....., Complainant

47 .....

48 Address Phone No.

49 (c) The complainant’s bank or financial institution has imposed on or collected from the  
50 complainant a service charge in the amount of \$..... in connection with the check, draft  
51 or order described above.

52 Taken, subscribed and sworn to before me, this ..... day of ....., 20....

53 .....

54 .....

55 (Title)

56 My commission expires the ..... day of ....., 20....”

57 (C) The failure to supply information indicated in parts (b) or (c) of the foregoing complaint

58 for warrant may not affect the sufficiency of the complaint.

**§61-3F-8. Complaint; notice of complaint; issuance of warrant; payment procedures; costs.**

1 After receipt of a complaint for warrant for a violation of §61-3F-1 or §61-3F-2 of this code,  
2 the magistrate court shall proceed with the issuance of the warrant as is provided by law:  
3 Provided, That no warrant may issue for an offense under §61-3F-1 or §61-3F-2 of this code  
4 which, upon conviction, would be punishable as a misdemeanor, unless the payee or holder of  
5 the check, draft or order which has been dishonored has sent notice thereof to the drawer of the  
6 check, draft or order in accordance with §61-3F-6 of this code, or unless notice has been sent by  
7 the magistrate as hereinafter provided. Proof that the notice was sent by the payee or holder may  
8 be evidenced by presentation of a return receipt indicating that the notice was mailed to the drawer  
9 by certified mail, or, if the mailed notice was not received or was refused by the drawer, by  
10 presentation of the mailed notice itself. The magistrate court shall receive and hold the check,  
11 draft, or order.

12 Upon receipt of a complaint for a misdemeanor warrant unaccompanied by proof that  
13 notice was sent by the payee or holder, the magistrate court shall immediately prepare and mail  
14 to the drawer of the check, draft or order a notice in form substantially as follows. The magistrate  
15 court shall impose any service charge reflected in the complaint as having been imposed on the  
16 payee or holder by the payee's or holder's bank or financial institution in connection with the  
17 check, draft or order and additional court costs in the amount of \$25. This notice shall be mailed  
18 to the drawer by United States mail, first class and postpaid, at the address provided at the time  
19 of presenting the check, draft or order. Service of this notice is complete upon mailing. The notice  
20 shall be in form substantially as follows:

21 "You are hereby notified that a complaint for a warrant for your arrest has been filed with  
22 this office to the following effect and purpose by ..... who upon oath complains that on the  
23 ..... day of ....., 20...., you did unlawfully issue and deliver unto him or her a certain check,  
24 draft or order in the amount of ..... drawn on ..... (name of bank or

25 financial institution) ..... where you did not have funds on deposit in or credit with the bank  
 26 or financial institution with which to pay the check, draft or order upon presentation and pray that  
 27 a warrant issue and that you be apprehended wherever you may be found by an officer authorized  
 28 to make an arrest and dealt with in accordance with the laws of the State of West Virginia.

29 A warrant for arrest will be issued on or after the ..... day of ....., 20.....

30 You can nullify the effect of this complaint and avoid arrest by paying to the magistrate  
 31 court clerk at ..... the amount due on the check, draft or order; service charges imposed  
 32 on the payee or holder by the payee’s or holder’s bank or financial institution in connection with  
 33 the check, draft or order in the amount of .....; and the costs of this proceeding in the amount  
 34 of \$25 on or before the ..... day of ....., 20....., at which time you will be given a receipt  
 35 with which you can obtain the check, draft or order from the magistrate court. The complainant is  
 36 forbidden by law to accept payment after the complaint is filed.

37 Magistrate Court of ..... County

38 .....

39 Date: ....."

40 This notice shall give the drawer of any such check, draft, or order 10 days within which  
 41 to make payment to magistrate court. In the event the drawer pays the total amount set forth in  
 42 the notice to the magistrate court within the ten-day period, no warrant may issue. The payment  
 43 may be made to the magistrate court in person or by mail by cash, certified check, bank draft or  
 44 money order and, in the event the payment is made by mail, the magistrate court clerk shall  
 45 immediately mail to the maker of the check, draft or order the receipt required by this section. In  
 46 the event the total amount is not so paid the court shall proceed with the issuance of the warrant  
 47 as is provided by law.

48 Upon receipt of payment of the total amount the magistrate court clerk shall issue to the  
 49 drawer a receipt sufficiently describing the check, draft, or order with which receipt the drawer is  
 50 entitled to receive the dishonored check, draft or order from the magistrate court holding it. The

51 magistrate court clerk shall forward the amount of the check, draft, or order, together with any  
52 service charge reflected on the complaint as having been imposed on the payee or holder by the  
53 payee's or holder's bank or financial institution in connection with the check, draft or order, to the  
54 payee or holder thereof, along with a description of the check, draft or order sufficient to enable  
55 the person filing the complaint to identify it and the transaction involved. Costs collected shall be  
56 dealt with as is provided by law for other criminal proceedings.

57 The drawer of a check, draft, or order against whom a warrant has been issued may at  
58 any time prior to trial pay to the court the amount of the check, draft or order; any service charge  
59 reflected in the complaint as having been imposed on the payee or holder by the payee's or  
60 holder's bank or financial institution in connection with the check, draft or order; and the court  
61 costs which would be assessed if the person were found guilty of the offense charged. These  
62 costs shall be imposed in accordance with §50-3-2 of this code.

**§61-3F-9. Payment of costs in worthless check cases; disposition of certain costs.**

1 (a) In any prosecution under §61-3F-1 or §61-3F-2 of this code, the costs that may  
2 otherwise be imposed against the drawer of any check, draft or order shall be imposed on the  
3 person initiating the prosecution if:

4 (1) Payment of the check, draft or order is accepted by the payee or holder thereof after  
5 the filing of a complaint for warrant and the charge is subsequently withdrawn or dismissed at the  
6 request of the complainant: *Provided*, That the provisions of this subdivision do not apply where  
7 a charge is dismissed, and restitution is paid as a condition of a plea agreement. The defendant  
8 shall be assessed costs for the prosecution of each charge of which he or she stands convicted  
9 and the fee for court costs assessed pursuant to §61-3F-8 of this code for each charge dismissed  
10 as a result of the plea agreement;

11 (2) The payee or holder had reason to believe that the check, draft, or order would be  
12 dishonored;

13 (3) The check, draft or order was postdated; or

14 (4) The matter is dismissed for failure to prosecute.

15 (b) Costs collected by magistrate court for issuance of notice as authorized by §61-3F-8  
16 of this code may not be paid into the special county fund created by §50-3-4 of this code but shall  
17 be accounted for separately and retained by the county in a fund designated the Worthless Check  
18 Fund until the sheriff issues warrants in furtherance of the allowable expenses specifically  
19 provided for by this section. These costs may not be included in any calculation of the amount of  
20 funds to be retained by the county under §50-3-4 of this code.

21 (c) A county may, after agreement with the court administrator's office of the Supreme  
22 Court of Appeals, appropriate and spend from the Worthless Check Fund herein established such  
23 sums as are necessary to pay or defray the expenses of providing a deputy sheriff to serve  
24 warrants for worthless check offenses and to pay or defray the expenses of providing additional  
25 deputy clerks in the office of the magistrate court clerk. After payment of these expenses, or after  
26 a determination that these services are not necessary, a county may appropriate and spend from  
27 the fund the sums necessary to defray:

28 (1) The expenses of providing bailiff and service of process services by the sheriff;

29 (2) The cost of acquiring or renting magistrate court offices and providing utilities and  
30 telephones and telephone service to such offices;

31 (3) The cost of complying with §61-3F-10 of this code; and

32 (4) The expenses of other services are provided to magistrate courts by the county.

**§61-3F-10. Preparation of list of worthless check warrants.**

1 Beginning on July 1, 2021, the magistrate court clerk of every county shall, between the  
2 first and fifth day of each month thereafter, prepare a cumulative list of all check warrants issued  
3 by the magistrates of the county during the preceding 12 calendar months and after the effective  
4 date of this section: *Provided*, That upon completion of each cumulative list, the list which was  
5 completed for the next preceding month and any copy thereof shall be destroyed by the magistrate  
6 court clerk. The persons charged in the warrants shall be listed alphabetically. The list shall also

7 contain the total number of warrants issued against each named person for the period covered  
 8 by the report, the number assigned to each warrant, and the date each such warrant was issued.  
 9 A copy of the cumulative list of worthless check warrants shall be forthwith forwarded to each  
 10 magistrate in the county and to the prosecuting attorney thereof. Upon the request of magistrates  
 11 or prosecutors in other counties of this state, the lists shall be regularly forwarded to them.

**§61-3F-11. Use of worthless check list upon receipt of complaint for warrant.**

1 On and after July 1, 2021, when a complaint for worthless check warrant is received by a  
 2 magistrate court, the person receiving the complaint shall consult the current list of worthless  
 3 check warrants for the county and any current lists of other counties in his or her possession to  
 4 determine whether the defendant named in the complaint for warrant is also named on the list or  
 5 lists as a person who has had worthless check warrants issued against him or her during the  
 6 period covered by the lists. If the list or lists consulted indicate that the person named in the  
 7 complaint has had no more than one worthless check warrant issued against him or her within  
 8 the time period covered by the lists, the person receiving the complaint for warrant shall proceed  
 9 to have a warrant issued or a notice served, as may be appropriate, in accordance with §61-3F-  
 10 8 of this code. If the list or lists consulted indicate that the person named in the complaint has  
 11 had two or more worthless check warrants issued against him or her within the time period  
 12 covered by the lists, the person receiving the complaint for warrant may not cause a warrant to  
 13 be issued, but shall instead forthwith prepare a “Notice of Multiple Worthless Check Warrants,”  
 14 which shall be in a form substantially as follows:

15 “NOTICE OF MULTIPLE WORTHLESS CHECK WARRANTS

16 THIS NOTICE IS TO BE ISSUED ONLY WHEN AN INDIVIDUAL HAS HAD TWO OR  
 17 MORE WORTHLESS CHECK WARRANTS ISSUED IN THE PRECEDING TWELVE MONTHS

18 To: prosecuting attorney of ..... County From: Magistrate Court of  
 19 ..... County

20 This is to notify you that ..... who resides at

21 ..... has issued worthless checks during the preceding twelve  
22 months for which warrants have been issued.

23 In accordance with the provisions of §61-3-10 of the code of West Virginia you have 10  
24 days to advise this court on how to proceed in this matter.”

25 A list of the worthless check warrants shall be attached to said notice, along with  
26 information concerning the check which is the subject of the pending complaint for worthless  
27 check warrant. Warrant numbers, check numbers, dates of checks, amounts of checks, payees,  
28 and drawee financial institutions for the checks listed shall be set forth.

29 Immediately upon preparation of the said notice, a copy thereof shall be forwarded to the  
30 prosecuting attorney of each county upon whose list of worthless check warrants the defendant’s  
31 name appears.

**§61-3F-12. Duties of prosecuting attorney upon receipt of notice of multiple worthless  
check warrants; magistrate court clerk to advise complainant.**

1 (a) Within 10 days after receiving a notice of multiple worthless check warrants forwarded  
2 in accordance with the provisions of the preceding section, a prosecuting attorney shall review  
3 the information contained therein, may consult additional current lists of worthless check warrants,  
4 and make other investigation, and shall make a written recommendation to the magistrate court  
5 which forwarded the notice that:

6 (1) A warrant should be issued, or a notice should be forwarded, as may be appropriate,  
7 in accordance with the provisions of section eight of this article, or

8 (2) A warrant should be issued for an offense defined under §61-3-24 of this code, or

9 (3) No action should be taken by the magistrate court pending a presentation to the  
10 appropriate grand jury of a bill seeking an indictment for an offense defined under §61-3-24 of  
11 this code.

12 (b) Upon receipt of the recommendation of the prosecuting attorney, the magistrate court  
13 clerk of the magistrate court holding the pending complaint for worthless check warrant shall

14 forward a copy of the prosecuting attorney's recommendation to the complainant, shall inform the  
15 complainant that the prosecuting attorney's recommendation is advisory only, and shall request  
16 the complainant to advise the court in what manner he or she desires to proceed.

**§61-3F-13. Creation and operation of a program for worthless check offenders; acceptance  
of person in program.**

1 (a) A prosecuting attorney may create within his or her office a worthless check restitution  
2 program for persons who have violated §61-3F-1 or §61-3F-2 of this code. This program may be  
3 conducted by the prosecuting attorney in conjunction with a law-enforcement agency or by a  
4 private entity under contract with the prosecuting attorney.

5 (b) The prosecuting attorney may adopt standards to determine the appropriateness of an  
6 individual case for the program. In developing these standards, the prosecuting attorney shall  
7 consider the following factors:

8 (1) The amount of the check, draft or order made, drawn, issued, uttered, or delivered;

9 (2) The person's criminal record;

10 (3) The number of times the person has participated in the program; and

11 (4) The number of warrants or cases pending against the person for violations of §61-3F-  
12 1 or §61-3F-2 of this code.

13 (c) Except as provided in §61-3F-15 of this code, nothing in this section may preclude the  
14 prosecuting attorney from prosecuting violations of §61-3F-1 or §61-3F-2 of this code.

15 (d) Nothing in this section may be construed or interpreted to mandate funding for any  
16 worthless check restitution program created in a prosecuting attorney's office or to require any  
17 appropriation by the Legislature.

18 (e) Notwithstanding any other provision of law to the contrary, no case is appropriate for  
19 referral to the program unless notice has been provided pursuant to §61-3F-6 or §61-3F-8 of this  
20 code.

**§61-3F-14. Notice to persons accepted to the worthless check restitution program.**

1 (a) Upon approval of an individual case for referral to the worthless check restitution  
2 program, a representative of the program shall send a notice by registered or certified mail to the  
3 person named in the complaint or warrant.

4 (b) This notice shall contain:

5 (1) The date and amount of the check, draft, or order;

6 (2) The name of the payee or holder;

7 (3) The date by which the individual shall contact the designated representative of the  
8 worthless check restitution program;

9 (4) A demand for full restitution of the face amount of the check, draft or order and any  
10 fees reflected in the complaint or warrant as having been imposed on the payee or holder by the  
11 payee's or holder's bank or financial institution; and

12 (5) A statement that failure to pay restitution and fees may result in criminal prosecution.

**§61-3F-15. Agreement to suspend prosecution of a person accepted into the restitution program.**

1 (a) The prosecuting attorney may enter into an agreement with a participant of the  
2 worthless check restitution program to suspend prosecution for a period to be determined by the  
3 prosecuting attorney.

4 (b) To remain eligible for the worthless check restitution program, the participant shall:

5 (1) Contact a representative of the program before the date required by the notice sent  
6 pursuant to §61-3F-14 of this code;

7 (2) Agree to comply with all the program terms;

8 (3) Complete a class conducted by the prosecuting attorney, his or her designee, or a  
9 private entity under contract with the prosecuting attorney, which offers offender education and  
10 instruction;

11 (4) Pay a fee in the amount of \$10 to be deposited in the "worthless check fund"  
12 established pursuant to the provisions of section nine of this article;

- 13 (5) Pay the fee required to participate in the class;  
14 (6) Pay full victim restitution; and  
15 (7) Pay all fees for participation in the program, unless those fees are waived.  
16 (c) The prosecuting attorney shall agree not to file criminal charges if the participant in the  
17 program completes the conditions of the agreement.

**§61-3F-16. Fees for participation in the worthless check restitution program.**

1 (a) The prosecuting attorney, his or her designee, or a private entity under contract with  
2 the prosecuting attorney may collect a fee not to exceed \$100 from any person participating in  
3 the worthless check restitution program: *Provided*, That the prosecuting attorney shall waive the  
4 fee if he or she determines that the person is indigent and unable to pay the fee.

5 (b) All fees collected pursuant to subsection (a) of this section by the prosecutor shall be  
6 remitted to the sheriff. The sheriff shall establish a special fund in the county treasury, designated  
7 the worthless check restitution program fund, in which the sheriff shall deposit all fees remitted by  
8 the prosecutor. The county commission shall appropriate money from the fund for the  
9 administration of the worthless check restitution program. The county commission shall also  
10 appropriate any excess money from the fund to supplement the annual operation expense  
11 appropriation of the office of the prosecuting attorney, if the prosecuting attorney certifies in writing  
12 to the county commission that a surplus exists in the fund at the end of the fiscal year.

**§61-3F-17. Statements by individuals referred to or participating in the worthless check restitution program.**

1 Any statement made by a person referred to the worthless check restitution program in  
2 connection with the determination of his or her eligibility for participation in the program and any  
3 statement made or information given by that person while participating in the program is  
4 inadmissible in any civil or criminal action or proceeding.

**ARTICLE 4. FORGERY AND CRIMES AGAINST THE CURRENCY.**

**§61-4-1. Forgery of public record, certificate, return or attestation of court or officer;**

**penalty.**

1 If Any person ~~who forge~~ forges a public record, or a certificate, returns or attestation of a  
 2 clerk of a court, notary public, judge, justice, magistrate, or any public officer, in relation to any  
 3 matter wherein such certificate, return, or attestation may be received as legal proof, or utters or  
 4 attempts to employ as true such forged record, certificate, return or attestation, knowing the same  
 5 to be forged, ~~he or she shall be~~ is guilty of a Class V felony, ~~and, upon conviction, shall be confined~~  
 6 ~~in the penitentiary not less than two nor more than ten years.~~

**§61-4-2. Forgery of official seals; keeping or concealing instrument for forging same;  
 penalty.**

1 If Any person ~~who forge~~ forges, or keeps or conceals any instrument for the purpose of  
 2 forging, the seal of a court, or of any public office or body politic or corporate in this state, ~~he or~~  
 3 ~~she shall be deemed~~ is guilty of a Class V felony, ~~and, upon conviction, shall be confined in the~~  
 4 ~~penitentiary not less than two nor more than ten years.~~

**§61-4-3. Counterfeiting; penalty.**

1 ~~If any~~ Any person ~~who forge~~ forges any coin, current by law or usage in this state, or any  
 2 note or bill of a banking institution, or fraudulently ~~make~~ makes any base coin, or a note or bill  
 3 purporting to be the note or bill of a banking institution, when such banking institution does not  
 4 exist; or ~~utter~~ utters or ~~attempt~~ attempts to employ as true, or sell, exchange or deliver, or ~~offer~~  
 5 offers to sell, exchange or deliver, or receive on sale, exchange, or delivery, with intent to utter or  
 6 employ or to have the same uttered or employed as true, any such false, forged, or base coin,  
 7 note or bill, knowing it to be so, ~~he or she shall be deemed~~ is guilty of a Class V felony, ~~and, upon~~  
 8 ~~conviction, shall be confined in the penitentiary not less than two nor more than ten years.~~

**§61-4-4. Making plates, etc., for forgery; possession of same; penalty.**

1 ~~If any~~ Any person who ~~engrave, stamp, or cast, or~~ otherwise makes or mends, engraves,  
 2 stamps, or casts, any plate, block, press or other thing adapted and designed for the forging and  
 3 false-making of any writing or other thing, the forging or false-making whereof is punishable by

4 this article; or if ~~such~~ the person have has in his or her possession any such plate, block, press,  
5 or other thing, with intent to use, or cause or permit it to be used, in forging or false-making any  
6 such writing or other thing, ~~he or she shall be deemed~~ is guilty of a Class V felony, ~~and, upon~~  
7 ~~conviction, shall be confined in the penitentiary not less than two nor more ten years.~~

**§61-4-5. Forging or uttering other writing; penalty; creation of unauthorized demand draft.**

1 (a) (1) If any person forge any writing, other than such as is mentioned in the first and third  
2 sections §61-4-1 and §61-4-3 of this article, to the prejudice of another's right, or utter or attempt  
3 to employ as true such forged writing, knowing it to be forged, in the value of \$2,500 or more,  
4 such person is guilty of a Class VI felony and, upon conviction, shall be confined in the penitentiary  
5 not less than one nor more than ten years, or, in the discretion of the court, be confined in jail not  
6 more than one year and be fined not exceeding \$500.

7 (2) If any person forge any writing, other than such as is mentioned in the first and third  
8 sections of this article, to the prejudice of another's right, or utter or attempt to employ as true  
9 such forged writing, knowing it to be forged, the value of \$25,000 or more, such person is guilty  
10 of a Class V felony.

11 (3) If any person forge any writing, other than such as is mentioned in the first and third  
12 sections of this article, to the prejudice of another's right, or utter or attempt to employ as true  
13 such forged writing, knowing it to be forged, in the value of less than \$2,500, such person is guilty  
14 of a Class I misdemeanor.

15 (4) If any person forge multiple writings to the prejudice of another's right, or utter or  
16 attempt to employ as true such forged writing, knowing it to be forged, then the value of such  
17 writings may be aggregated as part of determining the offense for which the person is to be  
18 charged.

19 (b) It is a violation of this section to create a demand draft under the purported authority  
20 of another person for the purpose of charging the other person's account with a bank or other  
21 financial institution, or to utter or attempt to employ as true such demand draft, if the demand draft

22 is created with the intent to defraud, and either or both of the following elements is present:

23 (1) The person does not, in fact, have the authority to charge the other person's account;

24 or

25 (2) The amount of the demand draft exceeds the amount authorized to be charged.

26 (c) (1) If a person creates a demand draft without authority or which exceeds the amount  
 27 authorized to be charged to an account, and the demand draft contains the account holder's  
 28 printed or typewritten name or account number, or a notation that the account holder authorized  
 29 the draft, or a statement "No signature required", "Authorization on file", "Signature on file", or  
 30 words to that effect, the demand draft is the equivalent of a check on which the drawer's signature  
 31 is forged or altered, and the provisions of subsection (a) of this section apply.

32 (2) If any person creates multiple demand drafts, as specified in subsection (b) of this  
 33 section, then the value of such writings may be aggregated as part of determining the offense for  
 34 which the person is to be charged.

35 (d) For purposes of this section, the term "demand draft" shall have the meaning ascribed  
 36 to it in §46-3-104 of this code.

**§61-4-6. Possession of counterfeit currency with intent to utter; penalty.**

1 If any person have in his or her possession forged bank notes, or pieces of forged or base  
 2 coin, such as are mentioned in ~~the third section~~ §61-4-3 of this code, knowing the same to be  
 3 forged or base, with intent to utter or employ the same as true, or to sell, exchange, or deliver  
 4 them, so as to enable any other person to utter or employ them as true, he or she shall, ~~if the~~  
 5 ~~number of such notes or pieces of coin in his or her possession at the same time, be ten or more,~~  
 6 ~~be deemed guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less~~  
 7 ~~than one nor more than five years, and if the number thereof be less than ten, he or she shall be~~  
 8 ~~deemed guilty of a Class I misdemeanor., and, upon conviction, shall be confined in jail not less~~  
 9 ~~than six months nor more than one year and be fined not exceeding \$500~~

**§61-4-7. Unauthorized currency; penalty.**

1           (a) If any person shall, without authority of law, issue any note, cryptocurrency, or other  
 2 security purporting that money or other thing of value is payable by or on behalf of such person,  
 3 with intent thereby to create a circulating medium, he or she ~~shall be guilty of a misdemeanor,~~  
 4 ~~and, upon conviction, shall be~~ is guilty of a Class II misdemeanor, ~~and, upon conviction, shall be~~  
 5 ~~confined in jail not more than six months and fined not more than \$500;~~ and the acceptance of  
 6 any such note, cryptocurrency, or security ~~shall~~ may not operate as a payment of any debt or  
 7 claim due or to become due to the person so accepting the same: *Provided*, That nothing in this  
 8 section shall be so construed as to prevent the giving of checks, promissory notes, single bills,  
 9 bonds, orders, drafts or bills of exchange for a debt or claim due or to become due.

10           (b) For purposes of this section, the term "cryptocurrency" shall have the meaning ascribed  
 11 to it in §61-15-1 of this code.

**§61-4-8. Passing or receiving unauthorized currency knowingly; penalty.**

1           (a) If any person not punishable under the provisions of the preceding section shall  
 2 knowingly pass or receive in payment any such note, cryptocurrency, or security, he or she shall  
 3 be guilty of a Class III misdemeanor, ~~and, upon conviction, shall be fined not less than \$10 nor~~  
 4 ~~more than \$100~~

5           (b) For purposes of this section, the term "cryptocurrency" shall have the meaning ascribed  
 6 to it in §61-15-1 of this code.

**§61-4-9. Unauthorized use, transfer, acquisition, alteration, or possession of certain benefits.**

1           (a) For the purposes of this section:

2           (1) "Benefits" means any payment, allotments, money, goods, or other things of value  
 3 granted pursuant to a benefit program;

4           (2) "Benefit access device" means any card, plate, account number or other means of  
 5 access that can be used, alone or in conjunction with another access device, to obtain payments,  
 6 allotments, benefits, money, goods, or other things of value that can be used to initiate a transfer

7 of funds;

8 (3) "Benefit program" includes the Federal Food Stamp Act, Supplemental Nutritional  
9 Assistance Program, Temporary Assistance to Needy Families or other similar state or federal  
10 financial assistance program; and

11 (4) "Terms of the benefit program" includes all statutes, rules, regulations, or other  
12 requirements of that specific benefit program for use of the benefits.

13 (b) Any person who knowingly uses, transfers, acquires, alters, or possesses benefits or  
14 one or more benefit access device contrary to the terms of the benefit program shall is:

15 (1) ~~If the benefits are of a value of less than \$1,000, be guilty of a misdemeanor and, upon~~  
16 ~~conviction thereof, shall for a first offense be fined not more than \$1,000 or confined in a regional~~  
17 ~~jail for not more than one year, or both fined and confined, and for a second and any subsequent~~  
18 ~~offense shall be fined not more than \$1,000 or confined in a regional jail for not less than thirty~~  
19 ~~days and not more than one year~~ If the benefits are of a value of less than \$2,500, guilty of a  
20 Class II misdemeanor, and for a second and any subsequent conviction guilty of a Class I  
21 misdemeanor;

22 (2) ~~If the benefits are of a value of \$1,000 or more, but less than \$5,000, be guilty of a~~  
23 ~~felony and, upon conviction, shall for a first offense be fined not more than \$10,000 or imprisoned~~  
24 ~~in a state correctional facility for not more than three years, or both fined and imprisoned, and for~~  
25 ~~a second and any subsequent offense shall be fined not more than \$10,000 or imprisoned for not~~  
26 ~~less than six months nor more than five years, or both fined and imprisoned; and~~

27 If the benefits are of a value of \$2,500 or more, guilty of a Class VI felony, and for a second  
28 and any subsequent conviction guilty of a Class V felony; and

29 (3) ~~If the benefits are of a value of \$5,000 or more, be guilty of a felony and, upon~~  
30 ~~conviction, fined not more than \$250,000 or imprisoned in a state correctional facility for not more~~  
31 ~~than ten years, or both fined and imprisoned~~ If the benefits are of a value of \$25,000 or more,  
32 guilty of a Class V felony, and for a second or subsequent offense, guilty of a Class IV felony.

33 (c) Any person who presents, or causes to be presented, benefits or one or more benefit  
34 access device for payment, allotments, money, goods, or other things of value knowing the same  
35 to have been received, transferred, or used in any manner in violation of the terms of the benefit  
36 program is:

37 (1) ~~If the benefits are of a value of less than \$1,000, guilty of a misdemeanor and, upon~~  
38 ~~conviction, shall for a first offense be fined not more than \$1,000 or confined in a regional jail for~~  
39 ~~not more than one year, or both fined and confined, and for a second and any subsequent~~  
40 ~~conviction shall be fined not more than \$1,000 or confined in a regional jail for not less than thirty~~  
41 ~~days and not more than one year; If the benefits are of a value of less than \$2,500, guilty of a~~  
42 ~~Class II misdemeanor, and for a second and any subsequent conviction guilty of a Class I~~  
43 ~~misdemeanor;~~

44 (2) ~~If the benefits are of a value of \$1,000 or more, guilty of a felony and, upon conviction,~~  
45 ~~shall for a first offense be fined not more than \$20,000 or imprisoned in a state correctional facility~~  
46 ~~for not more than five years, or both fined and imprisoned, and for a second and any subsequent~~  
47 ~~conviction shall be fined not more than \$20,000 or imprisoned in a state correctional facility for~~  
48 ~~not less than one year nor more than five years, or both fined and imprisoned. If the benefits are~~  
49 ~~of a value of \$2,500 or more, guilty of a Class VI felony, and for a second and any subsequent~~  
50 ~~conviction guilty of a Class V felony; and~~

51 (3) ~~If the benefits are of a value of \$25,000 or more, guilty of a Class V felony, and for a~~  
52 ~~second or subsequent offense, guilty of a Class IV felony.~~

53 (d) Notwithstanding the penalties contained in this section, in the case of any individual  
54 convicted of an offense under this section, the court may permit the individual to perform work  
55 approved by the court, in lieu of confinement, for the purpose of providing restitution for losses  
56 incurred by the United States and the state agency as a result of the offense for which the  
57 individual was convicted. If the court permits the individual to perform work and the individual  
58 agrees, the court shall withhold the imposition of the sentence on the condition that the individual

59 perform the assigned work. Upon the successful completion of the assigned work the court shall  
60 waive any confinement from the sentence.

61 (e) For purposes of this section, possession of two or more benefit access devices without  
62 authorization is prima facie evidence that an individual has knowledge the possession of the  
63 benefit access devices is a violation of the terms of the benefit program.

64 (f) In determining the value in this section, it is permissible to cumulate amounts or values  
65 of benefits.

66 (g) Notwithstanding any provision of this code to the contrary, no person who knowingly  
67 acquires benefits or one or more benefit access device contrary to the terms of the benefit  
68 program may be subject to prosecution under both this section and §9-5-4 of this code for conduct  
69 arising out of the same transaction or occurrence.

**§61-4-10 Payment cards; falsely making or loading the same; penalty.**

1 (a) Any person who falsely makes or falsely stamps a purported payment card or falsely  
2 loads or causes to be falsely loaded a payment card into a digital wallet is guilty of forgery and is  
3 subject to the penalties set forth in §61-4-5 of this code. A person “falsely makes” a payment card  
4 when such person makes or draws, in whole or in part, a device or instrument which purports to  
5 be the payment card of a named issuer, but which is not such a payment card because the issuer  
6 did not authorize the making or drawing, or when the person so alters a payment card which was  
7 validly issued. A person “falsely stamps” a payment card when, without the authorization of the  
8 named issuer, the person completes a payment card by adding any of the matter, other than the  
9 signature of the cardholder, which an issuer requires to appear on the payment card before it can  
10 be used by a cardholder. A person “falsely loads” or “causes to be falsely loaded” a payment card  
11 into a digital wallet when that person stores or causes to be stored on a digital wallet the digital  
12 form of (1) a payment card falsely made or falsely stamped by that person, (2) a payment card  
13 taken, procured, received or retained by such person under circumstances that constitute a  
14 violation of this section or (3) a payment card that such person knows is falsely made, falsely

15 stamped, forged, expired or revoked.

16 (b) For purposes of this section, "Payment card" shall mean a credit card, charge card,  
 17 debit card or any other card that is issued to an authorized card user and that allows the user to  
 18 obtain, purchase or receive goods, services, money, or anything else of value from a merchant.

## **ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**

### **§61-5-1. Perjury and subornation of perjury defined; false swearing defined. Penalties for perjury, subornation of perjury, and false swearing.**

1 (a) (1) Any person who is under an oath or affirmation which has been lawfully  
 2 administered and who willfully testifies falsely regarding a material matter in a trial of any person,  
 3 corporation, or other legal entity for a felony, or before any grand jury which is considering a felony  
 4 indictment, shall be guilty of the felony offense of perjury.

5 (b) (2) Any person who induces or procures another person to testify falsely regarding a  
 6 material matter in a trial of any person, corporation, or other legal entity for a felony, or before any  
 7 grand jury which is considering a felony indictment, shall be guilty of the felony offense of  
 8 subornation of perjury.

9 (b) To willfully swear falsely, under oath or affirmation lawfully administered, in a trial of  
 10 the witness or any other person for a felony, concerning a matter or thing not material, and on any  
 11 occasion other than a trial for a felony, concerning any matter or thing material or not material, or  
 12 to procure another person to do so, is false swearing and is a misdemeanor.

13 (c) A person convicted of perjury or subornation of perjury is guilty of a Class VI felony,  
 14 and a person convicted of false swearing is guilty of a Class I misdemeanor. And in either case  
 15 the person convicted shall be adjudged forever incapable of holding any office of honor, trust or  
 16 profit in this state, or of serving as a juror.

### **§61-5-2. ~~False swearing defined.~~ Aiding escape and other offenses relating to adults and juveniles in custody or confinement; penalties.**

1 ~~To willfully swear falsely, under oath or affirmation lawfully administered, in a trial of the~~

2 ~~witness or any other person for a felony, concerning a matter or thing not material, and on any~~  
3 ~~occasion other than a trial for a felony, concerning any matter or thing material or not material, or~~  
4 ~~to procure another person to do so, is false swearing and is a misdemeanor.~~

5 (a) When any adult or juvenile is lawfully detained in custody or confinement in any jail,  
6 state correctional facility, juvenile facility or juvenile detention center, and any other person  
7 delivers anything into the place of custody or confinement of the adult or juvenile with the intent  
8 to aid or facilitate the adult's or juvenile's escape or attempted escape therefrom, or if the other  
9 person forcibly rescues or attempts to rescue an adult or a juvenile therefrom, the other person is  
10 guilty of a Class VI felony.

11 (b) When any adult or juvenile is lawfully detained in custody or confinement in any jail, a  
12 state correctional facility or a juvenile facility or juvenile detention center, and any other person  
13 delivers any money or other thing of value, any written or printed matter, any article of  
14 merchandise, food or clothing, any medicine, utensil or instrument of any kind to the adult or  
15 juvenile without the express authority and permission of the supervising officer and with  
16 knowledge that the adult or juvenile is lawfully detained, the other person is guilty of a Class II  
17 misdemeanor: *Provided*, That the provisions of this section do not prohibit an attorney or his or  
18 her employees from supplying any written or printed material to an adult or juvenile which pertains  
19 to that attorney's representation of the adult or juvenile.

20 (c)(1) Any person, who transports any alcoholic liquor, nonintoxicating beer, poison,  
21 implement of escape, dangerous material, weapon, or any controlled substance as defined by  
22 Chapter 60A of this code onto the grounds of any jail, state correctional facility, juvenile facility or  
23 juvenile detention center within this state and is unauthorized by law to do so, or is unauthorized  
24 by the persons supervising the facility, is guilty of a Class VI felony.

25 (2) Any person, who willfully and knowingly transports or causes to be transported any  
26 telecommunications device into or upon any portion of any jail, state correctional facility, juvenile  
27 facility or juvenile detention center within this state that is not generally open and accessible to

28 members of the public without prior approval from the warden or administrator or designee and  
29 that person is unauthorized by law to do so, or is unauthorized by the persons supervising the  
30 facility, is guilty of a Class I misdemeanor.

31 (d) Any person, who delivers any alcoholic liquor, nonintoxicating beer, poison, implement  
32 of escape, dangerous material, weapon, or any controlled substance as defined by chapter sixty-  
33 a of this code to an adult or juvenile in custody or confinement in any jail, state correctional facility,  
34 juvenile facility or juvenile detention center within this state and is unauthorized by law to do so,  
35 or is unauthorized by the persons supervising the facility, is guilty of a Class VI felony.

36 (e) Whoever purchases, accepts as a gift or secures by barter, trade or in any other  
37 manner any article or articles manufactured at or belonging to any jail, state correctional facility,  
38 juvenile facility or juvenile detention center from any adult or juvenile detained therein is guilty of  
39 a Class I misdemeanor: *Provided*, That the provisions of this subsection do not apply to articles  
40 specially manufactured in any facility under the authorization of the persons supervising the facility  
41 and which are offered for sale within or outside of the facility.

42 (f) Whoever persuades, induces, or entices or attempts to persuade, induce, or entice any  
43 person who is in custody or confined in any jail, state correctional facility, juvenile facility, or  
44 juvenile detention center to escape therefrom or to engage or aid in any insubordination to the  
45 persons supervising the facility is guilty of a Class VI felony.

46 (g) (1) An inmate of a jail, state correctional facility, juvenile facility or juvenile detention  
47 center having in his or her possession any poison, implement of escape, dangerous material,  
48 weapon, unauthorized telecommunications device, or any controlled substance as defined by  
49 Chapter 60A of this code is guilty of a Class VI felony.

50 (2) An inmate of a jail, state correctional facility, juvenile facility or juvenile detention center  
51 having in his or her possession any alcoholic liquor, nonintoxicating beer, money, or other thing  
52 of value, any written or printed matter, any article of merchandise, food or clothing, any medicine,  
53 utensil or instrument of any kind without the express authority and permission of the supervising

54 officer is guilty of a Class I misdemeanor.

55 (h) As used in this section:

56 (1) "Dangerous material" means any incendiary material or device, highly flammable or  
57 caustic liquid, explosive, bullet or other material readily capable of causing death or serious bodily  
58 injury.

59 (2) "Delivers" means to transfer an item to an adult or juvenile who is detained in custody  
60 or confinement in any jail, correctional facility, juvenile facility or juvenile detention center or a  
61 building appurtenant to those places. The term includes bringing the item into a jail, correctional  
62 facility, juvenile facility or juvenile detention center or a building appurtenant to those places. The  
63 term includes putting an item in a place where it may be obtained by an inmate.

64 (3) "Inmate" means an adult or juvenile who is detained in custody or confinement in any  
65 jail, correctional facility, juvenile facility, or juvenile detention center, regardless of whether the  
66 individual is temporarily absent due to medical treatment, transportation, court appearance or  
67 other reason for a temporary absence.

68 (4) "Implement of escape" means a tool, implement, device, equipment, or other item  
69 which an inmate is not authorized to possess capable of facilitating, aiding or concealing an  
70 escape or attempted escape by an inmate.

71 (5) "Telecommunication device" means any type of instrument, device, machine or  
72 equipment which is capable of transmitting telephonic, electronic, digital, cellular or radio  
73 communications or any part of an instrument, device, machine or equipment which is capable of  
74 facilitating the transmission of telephonic, electronic, digital, cellular or radio communications  
75 regardless of whether the part itself is able to transmit. The term includes, but is not limited to,  
76 cellular phones, digital phones, and modem equipment devices.

77 (6) "Weapon" means an implement readily capable of lethal use and includes any firearm,  
78 knife, dagger, razor, other cutting or stabbing implement or club. The term includes any item which  
79 has been modified or adapted so that it can be used as a firearm, knife, dagger, razor, other

80 cutting or stabbing implement or club. For purposes of this definition, the term "firearm" includes  
 81 an unloaded firearm or the unassembled components of a firearm.

**§61-5-3. Penalties for perjury, subornation of perjury, and false swearing. Permitting escape; refusal of custody of prisoner; penalties.**

1 ~~A person convicted of perjury or subornation of perjury shall be guilty of a Class VI felony,~~  
 2 ~~and a person convicted of false swearing shall be guilty of a Class I misdemeanor. And in either~~  
 3 ~~case the person convicted shall be adjudged forever incapable of holding any office of honor, trust~~  
 4 ~~or profit in this state, or of serving as a juror. Any Jailer or other officer, or private correctional~~  
 5 ~~officer, who aids or voluntarily allows a prisoner convicted or charged with a felony or~~  
 6 ~~misdemeanor to escape from his or her custody, is guilty of a Class V felony. Any such jailer or~~  
 7 ~~other officer, or private correctional officer who, negligently, but not voluntarily, allows a person~~  
 8 ~~convicted of or charged with felony, or negligently, but not voluntarily allows a person convicted~~  
 9 ~~of or charged with an offense not a felony, to escape from his or her custody, or willfully refuses~~  
 10 ~~to receive into his or her custody any person lawfully committed thereto, is guilty of a Class I~~  
 11 ~~misdemeanor.~~

**§61-5-4. Bribery or attempted bribery; penalty. Persons in custody of institutions or officers.**

1 ~~If any person shall bribe, by directly or indirectly giving to or bestowing upon, or shall~~  
 2 ~~attempt to bribe by directly or indirectly giving to or bestowing upon, any executive, legislative,~~  
 3 ~~judicial, or ministerial officer of this state, or any member of the Legislature, after his election or~~  
 4 ~~appointment and either before or after he shall have been qualified or shall have taken his seat,~~  
 5 ~~any gift, gratuity, money, testimonial or other valuable thing, or shall make promise thereof, in~~  
 6 ~~order to influence him in the performance of any of his official, public duties, or with intent to~~  
 7 ~~influence his act, vote, opinion, decision or judgment on any matter, question, cause or~~  
 8 ~~proceeding, or to induce or procure him to vote or withhold his vote on any question or proceeding~~  
 9 ~~which is then or may thereafter be pending, or may by law come or be brought before him in his~~

10 ~~official capacity, he shall be guilty of a felony, and, upon conviction, shall be imprisoned in the~~  
11 ~~penitentiary not less than one nor more than ten years, and shall, moreover, be forever~~  
12 ~~disqualified from holding any office or position of honor, trust or profit in this state. Whoever,~~  
13 ~~escapes or attempts to escape by any means from the custody of a county sheriff, the director of~~  
14 ~~the Regional Jail Authority, an authorized representative of said persons, a law-enforcement~~  
15 ~~officer, probation officer, employee of the Division of Corrections, court bailiff, or from any~~  
16 ~~institution, facility, or any alternative sentence confinement, by which he or she is lawfully~~  
17 ~~confined, if the custody or confinement is by virtue of a charge or conviction for a felony, is guilty~~  
18 ~~of a Class VI felony; and if the custody or confinement is by virtue of a charge or conviction for a~~  
19 ~~misdemeanor, is guilty of a Class I misdemeanor.~~

**§61-5-5. Demanding or receiving bribes; penalty. Escapes and aiding in escapes; terms of confinement in addition to previous sentence.**

1 Any executive, legislative, judicial or ministerial officer, or member of the Legislature, who  
2 shall demand, receive or accept any gift, gratuity, money, testimonial or other valuable thing, or  
3 shall exact any promise to make such gift or to pay to him money, testimonial or other valuable  
4 thing, or to do any act beneficial to such officer or member of the Legislature, from any person,  
5 company or corporation, under an agreement or understanding that his vote, opinion, judgment  
6 or decision shall be given or withheld in any particular manner upon a particular side of any  
7 question, cause or proceeding, which is, or may be by law brought before him in his official  
8 capacity, or that in such capacity he shall make any particular nomination or appointment, or for  
9 any vote or influence he may give or withhold as such officer or member of the Legislature, or that  
10 such officer will fail to perform or improperly perform any of his official, public duties, shall be guilty  
11 of a felony and, upon conviction thereof, shall be confined in the penitentiary not less than one  
12 nor more than ten years; and in addition thereto such officer or member of the Legislature shall  
13 forfeit the office then held by him and shall be forever disqualified from holding any office or  
14 position of honor, trust or profit in this state. The terms of confinement specified in §25-4-11. of

15 this code or in §61-5-8, §61-5-9, and §61-5-10. of this code. shall be in addition to the period or  
16 periods of confinement to which any person convicted under this section may be subject to and  
17 shall commence at the expiration of any such former sentence.

**§61-5-6. Receiving bribe by officer in delay of service of process; penalty. Escapes from, and other offenses relating to, state benevolent and correctional institution, or private prison or mental health facilities; penalties.**

1 ~~If any officer authorized to serve legal process receive any money or other thing of value~~  
2 ~~for omitting or delaying to perform any duty pertaining to his or her office, he or she shall be guilty~~  
3 ~~of a misdemeanor, and, upon conviction, shall be confined in jail not more than six months and~~  
4 ~~be fined not exceeding \$100.~~

5 Except where otherwise provided, any person, who abducts any person who is an inmate  
6 or patient of any state benevolent or correctional institution, private prison or mental health facility  
7 is guilty of a Class V felony, and, upon conviction thereof, shall be imprisoned in the penitentiary  
8 for not more than five years. Any person, who persuades, induces, or entices, or attempts to  
9 persuade, induce or entice, any person who is an inmate or patient of any institution, private prison  
10 or facility to escape therefrom, or who conceals or harbors any such person, knowing him or her  
11 to have run away from any institution, private prison or facility, is guilty of a Class VI felony.

12 Any fugitive from any state benevolent or correctional institution, private prison, or mental  
13 health facility, may, on the order of the superintendent or other officer of the institution or facility,  
14 be arrested and returned to the institution or facility, or to any officer or agent thereof, by any  
15 sheriff, police officer or other person, and may also be arrested and returned by any officer or  
16 agent of such institution, private prison or facility.

17 Any person, who trespasses, idles, lounges or loiters upon the grounds of any state  
18 benevolent or correctional institution, private prison or mental health facility or communicates, or  
19 attempts to communicate, by signals, signs, writings or otherwise with any inmate or patient of  
20 such institution, private prison or facility, or conveys or assists in any way in establishing

21 communication between an inmate or patient of such institution, private prison or facility and any  
 22 person or persons outside thereof, except as authorized by the rules or regulations in force by the  
 23 authority governing the same, is guilty of a Class III misdemeanor. Any person, who, with intent  
 24 to defraud, purchases, accepts as a gift, or secures by barter or trade, or in any other manner,  
 25 any article of clothing from an inmate or patient of any state benevolent or correctional institution,  
 26 private prison or mental health facility issued to him or her, by any officer of the institution or  
 27 facility, or by any private correctional officer of the private prison for his or her use, or, with such  
 28 intent, secures any other article or articles belonging to any inmate or patient of the institution,  
 29 private prison or facility or to the institution, private prison or facility from an inmate or patient  
 30 thereof, is guilty of a petty offense and, upon conviction thereof, shall be fined a sum not less than  
 31 double the value of the articles, except that in no case shall the fine be less than \$500. Magistrates  
 32 shall have jurisdiction of all misdemeanors included in this paragraph, concurrently with the circuit  
 33 court.

**~~§61-5-7. Bribery of commissioner of court, Auditor, justice of the peace, arbitrator, umpire, juror, or other county official, either elected or appointed; penalty. Escape from custody of the commissioner of corrections.~~**

1 ~~Any person who gives or offers, directly or through any other person or persons, or~~  
 2 ~~promises, directly or indirectly, to give any money or other thing of value to a commissioner~~  
 3 ~~appointed by a court, Auditor, justice of the peace, arbitrator, umpire, juror (although not~~  
 4 ~~impaneled), or other county official, either elected or appointed, with intent to bias his or her~~  
 5 ~~opinion or influence his or her decision in relation to any matter in which he or she is acting or is~~  
 6 ~~to act; and any such commissioner, Auditor, justice of the peace, arbitrator, umpire, juror, or other~~  
 7 ~~county official, either elected or appointed, who corruptly takes or receives such money or other~~  
 8 ~~thing of value, or who agrees to take such money or other thing of value to bias or influence his~~  
 9 ~~or her opinion or action or both, shall be guilty of a felony, and, upon conviction, shall be confined~~  
 10 ~~in the penitentiary not less than one nor more than ten years, and fined in addition thereto not~~

11 ~~exceeding \$5,000. Any person who escapes from the custody of the commissioner of corrections,~~  
 12 ~~regardless of where such person is confined or where the escape occurs, is guilty of a Class V~~  
 13 ~~felony. A term of imprisonment imposed pursuant to the provisions of this section shall be imposed~~  
 14 ~~as a consecutive sentence and may not be served concurrently with any imprisonment,~~  
 15 ~~confinement or detention imposed under any prior sentence being served or otherwise being~~  
 16 ~~discharged at the time that person commits an offense under the provisions of this section. A~~  
 17 ~~person charged with an offense under the provisions of this section may not be released from the~~  
 18 ~~custody of the Commissioner of Corrections while the prosecution of the alleged offense is~~  
 19 ~~pending: *Provided*, That time served by that person after any other prior sentence has been~~  
 20 ~~served or otherwise discharged shall be applied to any sentence which may ultimately be imposed~~  
 21 ~~for an offense under this section. Venue for the prosecution of a violation of this section shall be~~  
 22 ~~in the county in which the escape occurs.~~

**~~§61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody or~~**  
**~~confinement; penalties. Escape from custody of the Director of Juvenile Services;~~**  
**~~penalties.~~**

1 ~~(a) Where any adult or juvenile is lawfully detained in custody or confinement in any jail,~~  
 2 ~~state correctional facility, juvenile facility or juvenile detention center, if any other person delivers~~  
 3 ~~anything into the place of custody or confinement of the adult or juvenile with the intent to aid or~~  
 4 ~~facilitate the adult's or juvenile's escape or attempted escape therefrom, or if the other person~~  
 5 ~~forcibly rescues or attempts to rescue an adult or a juvenile therefrom, the other person is guilty~~  
 6 ~~of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less~~  
 7 ~~than one nor more than ten years.~~

8 ~~(b) Where any adult or juvenile is lawfully detained in custody or confinement in any jail, a~~  
 9 ~~state correctional facility or a juvenile facility or juvenile detention center, if any other person~~  
 10 ~~delivers any money or other thing of value, any written or printed matter, any article of~~  
 11 ~~merchandise, food or clothing, any medicine, utensil or instrument of any kind to the adult or~~

12 ~~juvenile without the express authority and permission of the supervising officer and with~~  
13 ~~knowledge that the adult or juvenile is lawfully detained, the other person is guilty of a~~  
14 ~~misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500~~  
15 ~~and confined in jail not less than three nor more than twelve months: *Provided*, That the provisions~~  
16 ~~of this section do not prohibit an attorney or his or her employees from supplying any written or~~  
17 ~~printed material to an adult or juvenile which pertains to that attorney's representation of the adult~~  
18 ~~or juvenile.~~

19 ~~(c)(1) If any person transports any alcoholic liquor, nonintoxicating beer, poison,~~  
20 ~~implement of escape, dangerous material, weapon, or any controlled substance as defined by~~  
21 ~~chapter sixty-a of this code onto the grounds of any jail, state correctional facility, juvenile facility~~  
22 ~~or juvenile detention center within this state and is unauthorized by law to do so, or is unauthorized~~  
23 ~~by the persons supervising the facility, the person is guilty of a felony and, upon conviction thereof,~~  
24 ~~shall be fined not less than \$1,000 nor more than \$5,000 or confined in a state correctional facility~~  
25 ~~not less than two years nor more than ten years, or both, or, in the discretion of the court, be~~  
26 ~~confined in jail not more than one year and fined not more than \$500.~~

27 ~~(2) If any person willfully and knowingly transports or causes to be transported any~~  
28 ~~telecommunications device into or upon any portion of any jail, state correctional facility, juvenile~~  
29 ~~facility or juvenile detention center within this state that is not generally open and accessible to~~  
30 ~~members of the public without prior approval from the warden/administrator or designee and such~~  
31 ~~person is unauthorized by law to do so, or is unauthorized by the persons supervising the facility,~~  
32 ~~the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than~~  
33 ~~\$100 nor more than \$500 or confined in jail not more than one year or both fined and confined.~~

34 ~~(d) If any person delivers any alcoholic liquor, nonintoxicating beer, poison, implement of~~  
35 ~~escape, dangerous material, weapon or any controlled substance as defined by chapter sixty-a~~  
36 ~~of this code to an adult or juvenile in custody or confinement in any jail, state correctional facility,~~  
37 ~~juvenile facility or juvenile detention center within this state and is unauthorized by law to do so,~~

38 ~~or is unauthorized by the persons supervising the facility, the person is guilty of a felony and, upon~~  
39 ~~conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or confined in a state~~  
40 ~~correctional facility not less than one year nor more than five years, or both.~~

41 ~~(e) Whoever purchases, accepts as a gift or secures by barter, trade or in any other~~  
42 ~~manner any article or articles manufactured at or belonging to any jail, state correctional facility,~~  
43 ~~juvenile facility or juvenile detention center from any adult or juvenile detained therein is guilty of~~  
44 ~~a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500~~  
45 ~~and confined in jail not less than three nor more than twelve months: *Provided*, That the provisions~~  
46 ~~of this subsection do not apply to articles specially manufactured in any facility under the~~  
47 ~~authorization of the persons supervising the facility and which are offered for sale within or outside~~  
48 ~~of the facility.~~

49 ~~(f) Whoever persuades, induces or entices or attempts to persuade, induce or entice any~~  
50 ~~person who is in custody or confined in any jail, state correctional facility, juvenile facility or~~  
51 ~~juvenile detention center to escape therefrom or to engage or aid in any insubordination to the~~  
52 ~~persons supervising the facility is guilty of a misdemeanor and, upon conviction thereof, shall be~~  
53 ~~finned not less than \$50 nor more than \$500 and confined in jail not less than three nor more than~~  
54 ~~twelve months.~~

55 ~~(g) (1) An inmate of a jail, state correctional facility, juvenile facility or juvenile detention~~  
56 ~~center having in his or her possession any poison, implement of escape, dangerous material,~~  
57 ~~weapon, telecommunications device or any controlled substance as defined by chapter sixty-a of~~  
58 ~~this code is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor~~  
59 ~~more than \$5,000 or confined in a state correctional facility not less than one year nor more than~~  
60 ~~five years, or both, or, in the discretion of the court, be confined in jail not more than one year and~~  
61 ~~finned not more than \$500.~~

62 ~~(2) An inmate of a jail, state correctional facility, juvenile facility or juvenile detention center~~  
63 ~~having in his or her possession any alcoholic liquor, nonintoxicating beer, money or other thing of~~

64 value, any written or printed matter, any article of merchandise, food or clothing, any medicine,  
65 utensil or instrument of any kind without the express authority and permission of the supervising  
66 officer is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50  
67 nor more than \$500 and confined in jail not more than twelve months.

68 (h) As used in this section:

69 (1) "Dangerous material" means any incendiary material or device, highly flammable or  
70 caustic liquid, explosive, bullet or other material readily capable of causing death or serious bodily  
71 injury.

72 (2) "Delivers" means to transfer an item to an adult or juvenile who is detained in custody  
73 or confinement in any jail, correctional facility, juvenile facility or juvenile detention center or a  
74 building appurtenant to those places. The term includes bringing the item into a jail, correctional  
75 facility, juvenile facility or juvenile detention center or a building appurtenant to those places. The  
76 term includes putting an item in a place where it may be obtained by an inmate.

77 (3) "Inmate" means an adult or juvenile who is detained in custody or confinement in any  
78 jail, correctional facility, juvenile facility or juvenile detention center, regardless of whether the  
79 individual is temporarily absent due to medical treatment, transportation, court appearance or  
80 other reason for a temporary absence.

81 (4) "Implement of escape" means a tool, implement, device, equipment or other item which  
82 an inmate is not authorized to possess capable of facilitating, aiding or concealing an escape or  
83 attempted escape by an inmate.

84 (5) "Telecommunication device" means any type of instrument, device, machine or  
85 equipment which is capable of transmitting telephonic, electronic, digital, cellular or radio  
86 communications or any part of an instrument, device, machine or equipment which is capable of  
87 facilitating the transmission of telephonic, electronic, digital, cellular or radio communications  
88 regardless of whether the part itself is able to transmit. The term includes, but is not limited to,  
89 cellular phones, digital phones and modem equipment devices.

90 ~~(6) "Weapon" means an implement readily capable of lethal use and includes any firearm,~~  
91 ~~knife, dagger, razor, other cutting or stabbing implement or club. The term includes any item which~~  
92 ~~has been modified or adapted so that it can be used as a firearm, knife, dagger, razor, other~~  
93 ~~cutting or stabbing implement or club. For purposes of this definition, the term "firearm" includes~~  
94 ~~an unloaded firearm or the unassembled components of a firearm. (a) Any person, under the age~~  
95 ~~of 18 years of age, who escapes or attempts to escape from the custody of the Director of Juvenile~~  
96 ~~Services, regardless of where that person is confined or where the escape occurs, is guilty of a~~  
97 ~~delinquent act and subject to the jurisdiction of the circuit court of the county in which the escape~~  
98 ~~occurred, pursuant to §49-4-701 of this code: *Provided*, That upon agreement of all parties, the~~  
99 ~~prosecution of the escape may be transferred to the circuit court from which the juvenile was~~  
100 ~~originally committed.~~

101 ~~(b) Any person, over the age of 18 years of age or any juvenile who has been transferred~~  
102 ~~to the adult jurisdiction of the committing court, who escapes or attempts to escape from the~~  
103 ~~custody of the Director of Juvenile Services, regardless of where that person is confined or where~~  
104 ~~the escape or attempted escape occurs, is guilty of escape and, if the person is detained or~~  
105 ~~confined for an offense which is a felony or would have been a felony if committed by an adult is~~  
106 ~~guilty of a Class V felony. Any person, over the age of 18 years of age or any juvenile who has~~  
107 ~~been transferred to the adult jurisdiction of the committing court, who is detained for an offense~~  
108 ~~which is a misdemeanor or would have been a misdemeanor if committed by an adult is guilty of~~  
109 ~~a Class I misdemeanor.~~

110 ~~(c) The time to be served by such person for an offense under this section shall be~~  
111 ~~consecutive to any other sentence and shall commence after any other prior sentence has been~~  
112 ~~served or otherwise discharged.~~

**§61-5-9. Permitting escape; refusal of custody of prisoner; penalties. Refusal of officer to make, or delay in making, arrest; penalty.**

1 ~~If a jailer or other officer, or private correctional officer aid or voluntarily suffer a prisoner~~

2 ~~convicted or charged with felony to escape from his or her custody, he or she shall be deemed~~  
3 ~~guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor~~  
4 ~~more than five years. If any such jailer or other officer, or private correctional officer negligently,~~  
5 ~~but not voluntarily, suffer a person convicted of or charged with felony, or voluntarily or negligently~~  
6 ~~suffer a person convicted of or charged with an offense not a felony, to escape from his or her~~  
7 ~~custody, or willfully refuse to receive into his or her custody any person lawfully committed thereto,~~  
8 ~~he or she shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less~~  
9 ~~than six months, or be fined not exceeding \$1,000, or both such fine and confinement. If any~~  
10 ~~officer willfully and corruptly refuses to execute any lawful process, requiring him or her to~~  
11 ~~apprehend or confine a person convicted of or charged with an offense, or shall willfully and~~  
12 ~~corruptly omit or delay to execute that process, whereby the person escapes and goes at large,~~  
13 ~~the officer is guilty of a Class II misdemeanor.~~

**§61-5-10. Persons in custody of institutions or officers. Refusal of person to aid officer;**  
**penalty.**

1 ~~Whoever escapes or attempts to escape by any means from the custody of a county~~  
2 ~~sheriff, the director of the Regional Jail Authority, an authorized representative of said persons, a~~  
3 ~~law-enforcement officer, probation officer, employee of the Division of Corrections, court bailiff, or~~  
4 ~~from any institution, facility, or any alternative sentence confinement, by which he or she is lawfully~~  
5 ~~confined, if the custody or confinement is by virtue of a charge or conviction for a felony, is guilty~~  
6 ~~of a felony and, upon conviction thereof, shall be confined in a correctional facility for not more~~  
7 ~~than five years; and if the custody or confinement is by virtue of a charge or conviction for a~~  
8 ~~misdemeanor, is guilty of a misdemeanor and, upon conviction thereof, he or she shall be confined~~  
9 ~~in a county or regional jail for not more than one year. If any person, who, without good cause, on~~  
10 ~~being required by any sheriff or other officer, refuses or neglects to assist him or her in the~~  
11 ~~execution of his or her office in a criminal case, or in the preservation of the peace, or the~~  
12 ~~apprehending or securing of any person for a breach of the peace, or in any case of escape or~~

13 rescue, is guilty of a Class II misdemeanor: *Provided*, that no person may be compelled to place  
 14 themselves at risk of physical harm in rendering such assistance.

**§61-5-11. Escapes and aiding in escapes; terms of confinement in addition to previous sentence. Refusal of officer to execute act or process of Legislature or order of Governor; penalty.**

1 The terms of confinement specified in section eleven, article four, chapter twenty-five of  
 2 this code or in sections eight, nine and ten of this article shall be in addition to the period or periods  
 3 of confinement to which any person convicted under this section may be subject to and shall  
 4 commence at the expiration of any such former sentence. Any officer of this state whose duty it  
 5 is to execute or enforce any act of the Legislature, or any legal process or proceeding arising  
 6 thereunder, or any lawful order or proclamation of the Governor of the state, and who willfully  
 7 neglects or refuses to execute or enforce the same, without good cause, for every such offense,  
 8 is guilty of a Class II misdemeanor.

**§61-5-12. Escapes from, and other offenses relating to, state benevolent and correctional institution, or private prison or mental health facilities; penalties. Obstructing officer; fleeing from officer; making false statements to officer; interfering with emergency communications; penalties; definitions.**

1 Except where otherwise provided, whoever abducts any person who is an inmate or  
 2 patient of any state benevolent or correctional institution, private prison or mental health facility is  
 3 guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not more  
 4 than five years. Whoever persuades, induces or entices, or attempts to persuade, induce or  
 5 entice, any person who is an inmate or patient of any such institution, private prison or facility to  
 6 escape therefrom, or whoever conceals or harbors any such person, knowing him or her to have  
 7 run away from any such institution, private prison or facility, is guilty of a misdemeanor, and, upon  
 8 conviction thereof, shall be fined not less than \$100 nor more than \$1,000, and in addition thereto,  
 9 in the discretion of the court, may be imprisoned in the county jail not more than six months.

10           ~~Any fugitive from any state benevolent or correctional institution, private prison or mental~~  
11 ~~health facility, may, on the order of the superintendent or other officer of such institution or facility,~~  
12 ~~be arrested and returned to such institution or facility, or to any officer or agent thereof, by any~~  
13 ~~sheriff, police officer or other person, and may also be arrested and returned by any officer or~~  
14 ~~agent of such institution, private prison or facility.~~

15           ~~Whoever trespasses, idles, lounges or loiters upon the grounds of any other state~~  
16 ~~benevolent or correctional institution, private prison or mental health facility or communicates, or~~  
17 ~~attempts to communicate, by signals, signs, writings or otherwise with any inmate or patient of~~  
18 ~~such institution, private prison or facility, or conveys or assists in any way in establishing~~  
19 ~~communication between an inmate or patient of such institution, private prison or facility and any~~  
20 ~~person or persons outside thereof, except as authorized by the rules or regulations in force by the~~  
21 ~~authority governing the same, is guilty of a misdemeanor, and, upon conviction thereof, shall be~~  
22 ~~fined not less than \$20 nor more than \$500, or imprisoned not more than thirty days in the county~~  
23 ~~jail, or both, in the discretion of the court or magistrate. Whoever, with intent to defraud,~~  
24 ~~purchases, accepts as a gift, or secures by barter or trade, or in any other manner, any article of~~  
25 ~~clothing from an inmate or patient of any state benevolent or correctional institution, private prison~~  
26 ~~or mental health facility issued to him or her, by any officer of such institution or facility, or by any~~  
27 ~~private correctional officer of such private prison for his or her use, or, with such intent, secures~~  
28 ~~any other article or articles belonging to any inmate or patient of such institution, private prison or~~  
29 ~~facility or to such institution, private prison or facility from an inmate or patient thereof, is guilty of~~  
30 ~~a misdemeanor, and, upon conviction thereof, shall be fined a sum not less than double the value~~  
31 ~~of such articles, except that in no case shall the fine be less than \$100. Magistrates shall have~~  
32 ~~jurisdiction of all misdemeanors included in this paragraph, concurrently with the circuit court.~~

33           (a) A person, who by threats, menaces, acts, or otherwise forcibly or illegally hinders or  
34 obstructs or attempts to hinder or obstruct a law-enforcement officer, probation officer, parole  
35 officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy

36 or assistant fire marshal acting in his or her official capacity is guilty of a Class I misdemeanor.

37 (b) A person, who intentionally disarms or attempts to disarm a law-enforcement officer,  
38 correctional officer, probation officer, parole officer, courthouse security officer, the State Fire  
39 Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty  
40 of a Class VI felony.

41 (c) A person, who with intent to impede or obstruct a law-enforcement officer, the State  
42 Fire Marshal or a full-time deputy or assistant fire marshal in the conduct of an investigation of a  
43 misdemeanor or felony offense, knowingly and willfully makes a materially false statement is guilty  
44 of a Class I misdemeanor. The provisions of this section do not apply to statements made by a  
45 spouse, parent, stepparent, grandparent, sibling, half sibling, child, stepchild, or grandchild,  
46 whether related by blood or marriage, of the person under investigation. Statements made by the  
47 person under investigation may not be used as the basis for prosecution under this subsection.  
48 For purposes of this subsection, "law-enforcement officer" does not include a watchman, a  
49 member of the West Virginia State Police, or college security personnel who is not a certified law-  
50 enforcement officer.

51 (d) A person, who intentionally flees or attempts to flee by any means other than the use  
52 of a vehicle from a law-enforcement officer, probation officer, parole officer, courthouse security  
53 officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal  
54 acting in his or her official capacity who is attempting to make a lawful arrest of or to lawfully detain  
55 the person, and who knows or reasonably believes that the officer is attempting to arrest or  
56 lawfully detain him or her, is guilty of a Class I misdemeanor.

57 (e) A person, who intentionally flees or attempts to flee in a vehicle from a law-enforcement  
58 officer, probation officer or parole officer acting in his or her official capacity after the officer has  
59 given a clear visual or audible signal directing the person to stop is guilty of a Class I  
60 misdemeanor.

61 (f) A person, who intentionally flees or attempts to flee in a vehicle from a law-enforcement

62 officer, probation officer, or parole officer acting in his or her official capacity after the officer has  
63 given a clear visual or audible signal directing the person to stop, and who operates the vehicle  
64 in a manner showing a reckless indifference to the safety of others, is guilty of a Class VI felony.

65 (g) A person, who intentionally flees or attempts to flee in a vehicle from a law-enforcement  
66 officer, probation officer, or parole officer acting in his or her official capacity after the officer has  
67 given a clear visual or audible signal directing the person to stop, and who causes damage to the  
68 real or personal property of a person during or resulting from his or her flight, is guilty of a Class  
69 VI felony.

70 (h) A person, who intentionally flees or attempts to flee in a vehicle from a law-enforcement  
71 officer, probation officer, or parole officer acting in his or her official capacity after the officer has  
72 given a clear visual or audible signal directing the person to stop, and who causes bodily injury to  
73 a person during or resulting from his or her flight, is guilty of a Class V felony.

74 (i) A person, who intentionally flees or attempts to flee in a vehicle from a law-enforcement  
75 officer, probation officer, or parole officer acting in his or her official capacity after the officer has  
76 given a clear visual or audible signal directing the person to stop, and who causes death to a  
77 person during or resulting from his or her flight, is guilty of a Class III felony. A person imprisoned  
78 pursuant to this subsection is not eligible for parole prior to having served a minimum of three  
79 years of his or her sentence or the minimum period required by §62-12-13 of this code, whichever  
80 is greater.

81 (j) A person, who intentionally flees or attempts to flee in a vehicle from a law-enforcement  
82 officer, probation officer, or parole officer acting in his or her official capacity after the officer has  
83 given a clear visual or audible signal directing the person to stop, and who is under the influence  
84 of alcohol, controlled substances or drugs, is guilty of a Class V felony.

85 (k) For purposes of this section, the term “vehicle” includes any motor vehicle, motorcycle,  
86 motorboat, all-terrain vehicle, or snowmobile as those terms are defined in §17A-1-1 of this code,  
87 whether or not it is being operated on a public highway at the time and whether or not it is licensed

88 by the state.

89 (l) For purposes of this section, the terms “flee”, “fleeing”, and “flight” do not include a  
90 person’s reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement  
91 officer to maintain appropriate surveillance, for the purpose of complying with the officer’s  
92 direction to stop.

93 (m) The revisions to subsections (e), (f), (g), and (h) of this section enacted during the  
94 2010 regular legislative session shall be known as the Jerry Alan Jones Act.

95 (n) (1) No person, with the intent to purposefully deprive another person of emergency  
96 services, may interfere with or prevent another person from making an emergency  
97 communication, which a reasonable person would consider necessary under the circumstances,  
98 to law-enforcement, fire, or emergency medical service personnel.

99 (2) For the purpose of this subsection, the term “interfere with or prevent” includes, but is  
100 not limited to, seizing, concealing, obstructing access to or disabling or disconnecting a telephone,  
101 telephone line, or equipment or other communication device.

102 (3) For the purpose of this subsection, the term “emergency communication” means  
103 communication to transmit warnings or other information pertaining to a crime, fire, accident,  
104 power outage, disaster, or risk of injury or damage to a person or property.

105 (4) A person who violates this subsection is guilty of a Class III misdemeanor.

106 (5) A person who is convicted of a second offense under this subsection is guilty of a Class  
107 II misdemeanor.

108 (6) A person who is convicted of a third or subsequent offense under this subsection is  
109 guilty of a Class I misdemeanor.

110 (7) In determining the number of prior convictions for purposes of imposing punishment  
111 under this subsection, the court shall disregard all such prior convictions occurring more than 10  
112 years prior to the offense in question.

**§61-5-12a. Escape from custody of the commissioner of corrections.**

1 [Repealed.]

**61-5-12b. Escape from custody of the Director of Juvenile Services.**

1 [Repealed.]

**§61-5-13. Refusal of officer to make, or delay in making, arrest; penalty. Officer not liable for act done under statute or executive order afterward declared unconstitutional.**

1 If any officer wilfully and corruptly refuse to execute any lawful process, requiring him or  
2 her to apprehend or confine a person convicted of or charged with an offense, or shall wilfully and  
3 corruptly omit or delay to execute such process, whereby such person shall escape and go at  
4 large, such officer shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail  
5 not more than six months, and be fined not exceeding \$500. No officer in the lawful exercise or  
6 discharge of his or her official duty under any act of the Legislature, or any order or proclamation  
7 of the Governor of this state, may be held personally responsible therefor in any action, suit,  
8 prosecution or proceeding, civil or criminal, by reason of such act, order or proclamation being  
9 afterwards adjudged by any court of this state to be unconstitutional. Nor may his or her official  
10 bond be liable in any civil proceeding therefor.

**§61-5-14. Refusal of person to aid officer; penalty. Compounding offenses and misprision; penalties.**

1 If any person shall, on being required by any sheriff or other officer, refuse or neglect to  
2 assist him or her in the execution of his or her office in a criminal case, or in the preservation of  
3 the peace, or the apprehending or securing of any person for a breach of the peace, or in any  
4 case of escape or rescue, he or she shall be guilty of a misdemeanor, and, upon conviction, shall  
5 be confined in jail not more than six months and be fined not exceeding \$100. Any person, who  
6 knowing of the commission of an offense, takes any money, or reward, or an engagement  
7 therefor, upon an agreement or undertaking, expressed or implied, to compound or conceal such  
8 offense, or not to prosecute therefor, or not to give evidence thereof, if the offense is a felony, is  
9 guilty of a Class I misdemeanor and, if the offense is not a felony, unless it is punishable merely

10 by a forfeiture, is guilty of a Class II misdemeanor.

**~~§61-5-15. Refusal of person to execute order of arrest by justice; penalty. Exacting excessive fees; penalty.~~**

1 If any person, being required by a justice, on view of a breach of the peace or other  
2 offense, to bring before him or her the offender, shall refuse or neglect to obey the justice, he or  
3 she shall be guilty of a misdemeanor, and, upon conviction, shall be punished as provided in the  
4 preceding section; and if the justice declare himself or herself to be such, or if he or she be known  
5 to the offender, ignorance of his or her office shall not be pleaded as an excuse. If any officer, for  
6 performing an official duty for which a fee or compensation is allowed or provided by law,  
7 knowingly demand and receive a greater fee or compensation than is so allowed or provided, he  
8 or she shall be guilty of a Class III misdemeanor.

**~~§61-5-16. Refusal of officer to execute act or process of Legislature or order of Governor; penalty. Issuing fraudulent fee bills; penalty.~~**

1 Any officer of this state whose duty it is to execute or enforce any act of the Legislature,  
2 or any legal process or proceeding arising thereunder, or any lawful order or proclamation of the  
3 Governor of the state, and who shall wilfully neglect or refuse to execute or enforce the same,  
4 shall, for every such offense, be deemed guilty of a misdemeanor, and, upon conviction thereof,  
5 shall be fined not less than \$50 nor more than \$500, and may, in the discretion of the court, be  
6 imprisoned not exceeding one year. Any person, authorized by law to charge fees for services  
7 performed by him or her, and to issue fee bills therefor, fraudulently issue a fee bill for a service  
8 not performed by him or her, or for more than he or she is entitled to, is guilty of a Class III  
9 misdemeanor; and, in addition thereto, shall forfeit his or her office and be forever incapable of  
10 holding any office of honor, trust or profit in this state.

**~~§61-5-17. Obstructing officer; fleeing from officer; making false statements to officer; interfering with emergency communications; penalties; definitions. Alteration, concealment or destruction of public record by officer; penalty.~~**

1 ~~(a) A person who by threats, menaces, acts, or otherwise forcibly or illegally hinders or~~  
2 ~~obstructs or attempts to hinder or obstruct a law enforcement officer, probation officer, parole~~  
3 ~~officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy~~  
4 ~~or assistant fire marshal acting in his or her official capacity is guilty of a misdemeanor and, upon~~  
5 ~~conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more~~  
6 ~~than one year, or both fined and confined.~~

7 ~~(b) A person who intentionally disarms or attempts to disarm a law enforcement officer,~~  
8 ~~correctional officer, probation officer, parole officer, courthouse security officer, the State Fire~~  
9 ~~Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty~~  
10 ~~of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less~~  
11 ~~than one nor more than five years.~~

12 ~~(c) A person who, with intent to impede or obstruct a law enforcement officer, the State~~  
13 ~~Fire Marshal or a full-time deputy or assistant fire marshal in the conduct of an investigation of a~~  
14 ~~misdemeanor or felony offense, knowingly and willfully makes a materially false statement is guilty~~  
15 ~~of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than~~  
16 ~~\$200, or confined in jail for five days, or both fined and confined. The provisions of this section~~  
17 ~~do not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half~~  
18 ~~sibling, child, stepchild or grandchild, whether related by blood or marriage, of the person under~~  
19 ~~investigation. Statements made by the person under investigation may not be used as the basis~~  
20 ~~for prosecution under this subsection. For purposes of this subsection, "law enforcement officer"~~  
21 ~~does not include a watchman, a member of the West Virginia State Police or college security~~  
22 ~~personnel who is not a certified law enforcement officer.~~

23 ~~(d) A person who intentionally flees or attempts to flee by any means other than the use~~  
24 ~~of a vehicle from a law enforcement officer, probation officer, parole officer, courthouse security~~  
25 ~~officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal~~  
26 ~~acting in his or her official capacity who is attempting to make a lawful arrest of or to lawfully detain~~

27 ~~the person, and who knows or reasonably believes that the officer is attempting to arrest or~~  
28 ~~lawfully detain him or her, is guilty of a misdemeanor and, upon conviction thereof, shall be fined~~  
29 ~~not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and~~  
30 ~~confined.~~

31 ~~(e) A person who intentionally flees or attempts to flee in a vehicle from a law enforcement~~  
32 ~~officer, probation officer or parole officer acting in his or her official capacity after the officer has~~  
33 ~~given a clear visual or audible signal directing the person to stop is guilty of a misdemeanor and,~~  
34 ~~upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 and shall be~~  
35 ~~confined in jail not more than one year.~~

36 ~~(f) A person who intentionally flees or attempts to flee in a vehicle from a law enforcement~~  
37 ~~officer, probation officer, or parole officer acting in his or her official capacity after the officer has~~  
38 ~~given a clear visual or audible signal directing the person to stop, and who operates the vehicle~~  
39 ~~in a manner showing a reckless indifference to the safety of others, is guilty of a felony and, upon~~  
40 ~~conviction thereof, shall be fined not less than \$1,000 nor more than \$2,000 and shall be~~  
41 ~~imprisoned in a state correctional facility not less than one nor more than five years.~~

42 ~~(g) A person who intentionally flees or attempts to flee in a vehicle from a law enforcement~~  
43 ~~officer, probation officer, or parole officer acting in his or her official capacity after the officer has~~  
44 ~~given a clear visual or audible signal directing the person to stop, and who causes damage to the~~  
45 ~~real or personal property of a person during or resulting from his or her flight, is guilty of a~~  
46 ~~misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than~~  
47 ~~\$3,000 and shall be confined in jail for not less than six months nor more than one year.~~

48 ~~(h) A person who intentionally flees or attempts to flee in a vehicle from a law enforcement~~  
49 ~~officer, probation officer, or parole officer acting in his or her official capacity after the officer has~~  
50 ~~given a clear visual or audible signal directing the person to stop, and who causes bodily injury to~~  
51 ~~a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof,~~  
52 ~~shall be imprisoned in a state correctional facility not less than three nor more than 10 years.~~

53 ~~(i) A person who intentionally flees or attempts to flee in a vehicle from a law enforcement~~  
54 ~~officer, probation officer, or parole officer acting in his or her official capacity after the officer has~~  
55 ~~given a clear visual or audible signal directing the person to stop, and who causes death to a~~  
56 ~~person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof,~~  
57 ~~shall be imprisoned in a state correctional facility for not less than five nor more than 15 years. A~~  
58 ~~person imprisoned pursuant to this subsection is not eligible for parole prior to having served a~~  
59 ~~minimum of three years of his or her sentence or the minimum period required by §62-12-13 of~~  
60 ~~this code, whichever is greater.~~

61 ~~(j) A person who intentionally flees or attempts to flee in a vehicle from a law enforcement~~  
62 ~~officer, probation officer, or parole officer acting in his or her official capacity after the officer has~~  
63 ~~given a clear visual or audible signal directing the person to stop, and who is under the influence~~  
64 ~~of alcohol, controlled substances or drugs, is guilty of a felony and, upon conviction thereof, shall~~  
65 ~~be imprisoned in a state correctional facility not less than three nor more than 10 years.~~

66 ~~(k) For purposes of this section, the term "vehicle" includes any motor vehicle, motorcycle,~~  
67 ~~motorboat, all-terrain vehicle, or snowmobile as those terms are defined in §17A-1-1 of this code,~~  
68 ~~whether or not it is being operated on a public highway at the time and whether or not it is licensed~~  
69 ~~by the state.~~

70 ~~(l) For purposes of this section, the terms "flee", "fleeing", and "flight" do not include a~~  
71 ~~person(s) reasonable attempt to travel to a safe place, allowing the pursuing law enforcement~~  
72 ~~officer to maintain appropriate surveillance, for the purpose of complying with the officer(s)~~  
73 ~~direction to stop.~~

74 ~~(m) The revisions to subsections (e), (f), (g), and (h) of this section enacted during the~~  
75 ~~2010 regular legislative session shall be known as the Jerry Alan Jones Act.~~

76 ~~(n) (1) No person, with the intent to purposefully deprive another person of emergency~~  
77 ~~services, may interfere with or prevent another person from making an emergency~~  
78 ~~communication, which a reasonable person would consider necessary under the circumstances,~~

79 ~~to law enforcement, fire, or emergency medical service personnel.~~

80 ~~(2) For the purpose of this subsection, the term “interfere with or prevent” includes, but is~~  
81 ~~not limited to, seizing, concealing, obstructing access to or disabling or disconnecting a telephone,~~  
82 ~~telephone line, or equipment or other communication device.~~

83 ~~(3) For the purpose of this subsection, the term “emergency communication” means~~  
84 ~~communication to transmit warnings or other information pertaining to a crime, fire, accident,~~  
85 ~~power outage, disaster, or risk of injury or damage to a person or property.~~

86 ~~(4) A person who violates this subsection is guilty of a misdemeanor and, upon conviction~~  
87 ~~thereof, shall be confined in jail for a period of not less than one day nor more than one year or~~  
88 ~~shall be fined not less than \$250 nor more than \$2,000, or both fined and confined.~~

89 ~~(5) A person who is convicted of a second offense under this subsection is guilty of a~~  
90 ~~misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months~~  
91 ~~nor more than one year or fined not less than \$500 nor more than \$3,000, or both fined and~~  
92 ~~confined.~~

93 ~~(6) A person who is convicted of a third or subsequent offense under this subsection is~~  
94 ~~guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than six~~  
95 ~~months nor more than one year or fined not less than \$500 nor more than \$4,000, or both fined~~  
96 ~~and confined.~~

97 ~~(7) In determining the number of prior convictions for purposes of imposing punishment~~  
98 ~~under this subsection, the court shall disregard all such prior convictions occurring more than 10~~  
99 ~~years prior to the offense in question. Any clerk of a court, or other public officer, who fraudulently~~  
100 ~~makes a false entry, or erases, alters or destroys any record in his or her keeping and belonging~~  
101 ~~to his or her office, or who willfully secretes any such record from any person having the right to~~  
102 ~~inspect the same, is guilty of a Class VI felony; and, in addition thereto, shall forfeit his or her~~  
103 ~~office and be forever incapable of holding any office of honor, trust or profit in this state.~~

**~~§61-5-18. Officer not liable for act done under statute or executive order afterward declared~~**

~~unconstitutional. Larceny, concealment, or destruction of public record by person not officer; penalty.~~

1 No officer in the lawful exercise or discharge of his or her official duty under any act of the  
 2 Legislature, or any order or proclamation of the Governor of this state, shall be held personally  
 3 responsible therefor in any action, suit, prosecution or proceeding, civil or criminal, by reason of  
 4 such act, order or proclamation being afterwards adjudged by any court of this state to be  
 5 unconstitutional. Nor shall his or her official bond be liable in any civil proceeding therefor. Any  
 6 person, other than an officer in lawful charge thereof, who steals, fraudulently secretes or  
 7 destroys, a public record or any part thereof, is guilty of a Class I misdemeanor

~~§61-5-19. Compounding offenses and misprision; penalties. Corrupt summoning of jurors to find biased verdict; penalty.~~

1 If any person, knowing of the commission of an offense, take any money, or reward, or an  
 2 engagement therefor, upon an agreement or undertaking, expressed or implied, to compound or  
 3 conceal such offense, or not to prosecute therefor, or not to give evidence thereof, he or she shall,  
 4 if such offense be a felony, be guilty of a misdemeanor, and, upon conviction, be confined in jail  
 5 not more than one year and fined not exceeding \$500; and if such offense be not a felony, unless  
 6 it be punishable merely by a forfeiture to him or her, he or she may be confined in jail not more  
 7 than six months, and shall be fined not exceeding \$100. A sheriff or other officer who, corruptly,  
 8 or through favor or ill will, summons a juror, with intent that such juror shall find a verdict for or  
 9 against any party to an action, or shall be biased in his or her conduct as such juror, is guilty of a  
 10 Class VI felony, and shall forfeit his or her office and be forever incapable of holding any office of  
 11 honor, trust or profit in this state.

~~§61-5-20. Exactng excessive fees; penalty. Procuring the summoning of biased juror by party other than officer; penalty.~~

1 If any officer, for performing an official duty for which a fee or compensation is allowed or  
 2 provided by law, knowingly demand and receive a greater fee or compensation than is so allowed

3 ~~or provided, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be fined not~~  
 4 ~~exceeding \$50. Any person, who procures or attempts to procure a juror to be summoned, with~~  
 5 ~~intent that such juror shall find a verdict for or against either party to an action or shall be biased~~  
 6 ~~in his or her conduct as such juror, is guilty of a Class VI felony.~~

**§61-5-21. Issuing fraudulent fee bills; penalty. Discrimination against employee summoned  
 for jury duty; penalty.**

1 If any person authorized by law to charge fees for services performed by him ~~or her,~~ and  
 2 to issue fee bills therefor, fraudulently issue a fee bill for a service not performed by him ~~or her,~~  
 3 or for more than he ~~or she~~ is entitled to, he ~~or she~~ shall be guilty of a misdemeanor, and, upon  
 4 conviction, shall be fined not exceeding \$500; and, in addition thereto, he ~~or she~~ shall forfeit his  
 5 ~~or her~~ office and be forever incapable of holding any office of honor, trust or profit in this state. It  
 6 is unlawful for any person to terminate or threaten to terminate from employment or decrease the  
 7 regular compensation of employment of an employee for time the employee was not actually  
 8 away from his or her employment because an employee received, or was served with a summons  
 9 for jury duty, or was absent from work to respond to a summons for jury duty or to serve on any  
 10 jury in any court of this state, the United States, or any state of the United States.

11 Any person violating the provisions of this section is guilty of a Class III misdemeanor.

**§61-5-22. Alteration, concealment or destruction of public record by officer; penalty.  
 Contempt of court; what constitutes contempt; jury trial; presence of defendant.**

1 If any clerk of a court, or other public officer, fraudulently make a false entry, or erase,  
 2 alter or destroy any record in his ~~or her~~ keeping and belonging to his ~~or her~~ office, or shall wilfully  
 3 secrete any such record from any person having the right to inspect the same, he ~~or she~~ shall be  
 4 guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than one year  
 5 and be fined not exceeding \$1,000; and, in addition thereto, he ~~or she~~ shall forfeit his ~~or her~~ office  
 6 and be forever incapable of holding any office of honor, trust or profit in this state. The courts and  
 7 the judges thereof may issue attachment for contempt and punish them summarily only in the

8 following cases: (a) Misbehavior in the presence of the court, or so near thereto as to obstruct or  
 9 interrupt the administration of justice; (b) violence or threats of violence to a judge or officer of the  
 10 court, or to a juror, witness, or party going to, attending or returning from the court, for or in respect  
 11 of any act or proceeding had, or to be had, in such court; (c) misbehavior of an officer of the court,  
 12 in his or her official character; (d) disobedience to or resistance of any officer of the court, juror,  
 13 witness, or other person, to any lawful process, judgment, decree or order of the said court. No  
 14 court may, without a jury, for any such contempt as is mentioned in subdivision (a) of this section,  
 15 impose a sentence for any such offense in excess of a Class III misdemeanor. But, in any such  
 16 case, the court may impanel a jury (without an indictment or any formal pleading) to ascertain the  
 17 fine or imprisonment proper to be inflicted and may give judgment according to the verdict:  
 18 Provided, that in no such case may the penalty prescribed by that judgment exceed a Class I  
 19 misdemeanor. Additionally, any jury trial for contempt shall be presided over a different judge than  
 20 the judge against whom such contempt was alleged to have been rendered. No court may impose  
 21 a fine for contempt, unless the defendant is present in court, or has have been served with a rule  
 22 of the court to show cause, on some certain day, and has failed to appear and show cause.

**~~§61-5-23. Larceny, concealment or destruction of public record by person not officer;~~**  
**~~penalty. Intimidation of and retaliation against public officers and employees,~~**  
**~~jurors, and witnesses; fraudulent official proceedings and legal processes against~~**  
**~~public officials and employees; penalties.~~**

1 ~~If any person, other than an officer in lawful charge thereof, steal, fraudulently secrete or~~  
 2 ~~destroy, a public record or any part thereof, he or she shall be guilty of a misdemeanor, and, upon~~  
 3 ~~conviction, shall be confined in jail not more than one year and be fined not exceeding \$1,000.~~

4 (a) Definitions. — As used in this section:

5 “Fraudulent” means not legally issued or sanctioned under the laws of this state or of the  
 6 United States, including forged, false, and materially misstated;

7 “Legal process” means an action, appeal, document instrument, or other writing issued,

8 filed, or recorded to pursue a claim against person or property, exercise jurisdiction, enforce a  
9 judgment, fine a person, put a lien on property, authorize a search and seizure, arrest a person,  
10 incarcerate a person, or direct a person to appear, perform, or refrain from performing a specified  
11 act. “Legal process” includes, but is not limited to, a complaint, decree, demand, indictment,  
12 injunction, judgment, lien, motion, notice, order, petition, pleading, sentence, subpoena,  
13 summons, warrant, or writ;

14 “Official proceeding” means a proceeding involving a legal process or other process of a  
15 tribunal of this state or of the United States;

16 “Person” means an individual, group, association, corporation, or any other entity;

17 “Public official or employee” means an elected or appointed official or employee of a state  
18 or federal court, commission, department, agency, political subdivision, or any governmental  
19 instrumentality;

20 “Recorder” means a clerk or other employee in charge of recording instruments in a court,  
21 commission, or other tribunal of this state or of the United States; and

22 “Tribunal” means a court or other judicial or quasi-judicial entity, or an administrative,  
23 legislative, or executive body, or that of a political subdivision, created or authorized under the  
24 constitution or laws of this state or of the United States.

25 (b) Intimidation; harassment. — It is unlawful for a person to use intimidation, physical  
26 force, harassment, or a fraudulent legal process or official proceeding, or to threaten to do so  
27 where such threat is directed at inciting or producing imminent lawless action of a violent nature  
28 that could cause bodily harm and is likely to incite or produce such action or to attempt to do so,  
29 with the intent to:

30 (1) Impede or obstruct a public official or employee from performing his or her official  
31 duties;

32 (2) Impede or obstruct a juror or witness from performing his or her official duties in an  
33 official proceeding;

34 (3) Influence, delay, or prevent the testimony of any person in an official proceeding; or

35 (4) Cause or induce a person to: (A) Withhold testimony, or withhold a record, document

36 or other object from an official proceeding; (B) alter, destroy, mutilate, or conceal a record,

37 document, or other object impairing its integrity or availability for use in an official proceeding; (C)

38 evade an official proceeding summoning a person to appear as a witness or produce a record,

39 document, or other object for an official proceeding; or (D) be absent from an official proceeding

40 to which such person has been summoned.

41 (c) Retaliation. — It is unlawful for a person to cause injury or loss to person or property,

42 or to threaten to do so where such threat is directed at inciting or producing imminent lawless

43 action of a violent nature that could cause bodily harm and is likely to incite or produce such action

44 or to attempt to do so, with the intent to:

45 (1) Retaliate against a public official or employee for the performance or nonperformance

46 of an official duty;

47 (2) Retaliate against a juror or witness for performing his or her official duties in an official

48 proceeding; or

49 (3) Retaliate against any other person for attending, testifying, or participating in an official

50 proceeding, or for the production of any record, document, or other object produced by a person

51 in an official proceeding.

52 (d) Penalty. — A person convicted of an offense under subsections (b) or (c) of this section

53 is guilty of a Class V felony.

54 (e) Civil cause of action. — A person who violates this section is liable in a civil action to

55 any person harmed by the violation for injury or loss to person or property incurred as a result of

56 the commission of the offense and for reasonable attorney's fees, court costs, and other expenses

57 incurred as a result of prosecuting a civil action commenced under this subsection, which is not

58 the exclusive remedy of a person who suffers injury or loss to person or property as a result of a

59 violation of this section.

60 (f) Civil sanctions. — In addition to the criminal and civil penalties set forth in this section,  
61 any fraudulent official proceeding or legal process brought in a tribunal of this state in violation of  
62 this section shall be dismissed by the tribunal and the person may be ordered to reimburse the  
63 aggrieved person for reasonable attorney’s fees, court costs, and other expenses incurred in  
64 defending or dismissing such action.

65 (1) Refusal to record. — A recorder may refuse to record a clearly fraudulent lien or other  
66 legal process against a public official or employee or his or her property. The recorder does not  
67 have a duty to inspect or investigate whether a lien or other legal process is fraudulent, nor is the  
68 recorder liable for refusing to record a lien or other legal process that the recorder believes is in  
69 violation of this section; and

70 (2) If a fraudulent lien or other legal process against a public official or employee or his or  
71 her property is recorded then:

72 (A) Request to release lien. — The public official or employee may send a written request  
73 by certified mail to the person who filed the fraudulent lien or legal process requesting the person  
74 to release or dismiss the lien or legal process. If such lien or legal process is not properly released  
75 or dismissed within 21 days, then it shall be inferred that the person intended to harass the public  
76 official or employee in violation of subsection (b) of this section and shall be subject to the criminal  
77 penalties in subsection (d) of this section and any other remedies provided in this section; or

78 (B) Notice of fraudulent lien. — A government attorney on behalf of the public official or  
79 employee may record a notice of fraudulent lien or legal process with the recorder who accepted  
80 the lien or legal process for filing. Such notice shall invalidate the fraudulent lien or legal process  
81 and cause it to be removed from the records. No filing fee may be charged for the filing of the  
82 notice.

83 (g) A person’s lack of belief in the jurisdiction or authority of this state or of the United  
84 States is no defense to prosecution of a civil or criminal action under this section.

85 (h)(1) Nothing in this section prohibits or in any way limits the lawful acts of legitimate

86 public officials or employees;

87 (2) Nothing in this section prohibits or in any way limits a person's lawful and legitimate  
88 right to freely assemble, express opinions, or designate group affiliation; or

89 (3) Nothing in this section prohibits or in any way limits a person's lawful and legitimate  
90 access to a tribunal of this state or prevents a person from instituting or responding to a lawful  
91 action.

**§61-5-24. ~~Corrupt summoning of jurors to find biased verdict; penalty. Fraudulent official proceedings; causing a public employee or official to file a fraudulent legal process; impersonation of a public official, employee or tribunal; penalties.~~**

1 ~~A sheriff or other officer who, corruptly, or through favor or ill will, shall summon a juror,~~  
2 ~~with intent that such juror shall find a verdict for or against any party to an action, or shall be~~  
3 ~~biased in his or her conduct as such juror, shall be guilty of a misdemeanor, and, upon conviction,~~  
4 ~~shall be confined in jail not exceeding six months and fined not exceeding \$500, and shall forfeit~~  
5 ~~his or her office and be forever incapable of holding any office of honor, trust or profit in this state.~~

6 (a) Definitions. -- For the purpose of this section, the following terms have the meaning  
7 ascribed to them in section twenty-seven of this article: "Fraudulent", "legal process", "official  
8 proceeding", "person", "public official or employee", "recorder", and "tribunal".

9 (b) Fraudulent official proceedings. -- It is unlawful for a person to knowingly engage in a  
10 fraudulent official proceeding or legal process.

11 (c) Fraudulent filings. -- It is unlawful for a person to knowingly cause a public official or  
12 employee to file, record or deliver a fraudulent claim of indebtedness, common law lien or other  
13 lien, financial statement, complaint, summons, judgment, warrant or other legal process, including  
14 those issued as the result of a fraudulent official proceeding.

15 (d) Fraudulent service. -- It is unlawful for a person to knowingly serve a public official or  
16 employee with a fraudulent claim of indebtedness, common law lien or other lien, financial  
17 statement, complaint, summons, judgment, warrant or other legal process, including those issued

18 as the result of a fraudulent official proceeding.

19 (f) First offense. -- Any person who violates a provision of this section is guilty of a Class I  
20 misdemeanor.

21 (g) Second offense. -- Any person convicted of a second or subsequent offense under this  
22 section is guilty of a Class VI felony.

23 (h) Civil cause of action. -- A person who violates this section is liable in a civil action to  
24 any person harmed by the violation for injury or loss to person or property incurred as a result of  
25 the commission of the offense and for reasonable attorney's fees, court costs and other expenses  
26 incurred as a result of prosecuting the civil action commenced under this subsection, which is not  
27 the exclusive remedy of a person who suffers injury or loss to person or property as a result of a  
28 violation of this section.

29 (i) Civil sanctions. -- In addition to the criminal and civil penalties set forth in this section,  
30 a fraudulent official proceeding or legal process brought in a tribunal in violation of this section  
31 shall be dismissed by the tribunal and the person may be ordered to reimburse the aggravated  
32 person for reasonable attorney's fees, court costs and other expenses incurred in defending or  
33 dismissing such action.

34 (1) Refusal to record. -- A recorder may refuse to record a clearly fraudulent lien or other  
35 legal process against a person or his or her property. The recorder does not have a duty to inspect  
36 or investigate whether a lien or other legal process is fraudulent nor is the recorder liable for  
37 refusing to record a lien or other legal process that the recorder believes is in violation of this  
38 section.

39 (2) If a fraudulent lien or other legal process against a person or his or her property is  
40 recorded then:

41 (A) Request to release lien. -- A person may send a written request by certified mail to the  
42 person who filed the fraudulent lien or legal process, requesting the person to release or dismiss  
43 the lien or legal process. If such lien or legal process is not properly released or dismissed within

44 twenty-one days, then the person shall be presumed to have intended to have committed a  
45 violation of this section and shall be subject to the penalties provided for in this section; or

46 (B) *Petition to circuit court.* -- A person may petition the circuit court of the county where  
47 the fraudulent lien or legal process was recorded for an order that may be granted ex parte  
48 directing the person who filed the lien or legal process to appear before the court and show cause  
49 why the lien or legal process should not be released or dismissed, deemed fraudulent and the  
50 person penalized as provided for in this section.

51 (i) The petition shall set forth a concise statement of the facts and the grounds upon which  
52 relief is requested.

53 (ii) No filing fee shall be charged for the filing of such petitions.

54 (iii) The order to show cause shall be served upon the person who filed the lien or legal  
55 process according to rule 4 of the rules of civil procedure and the date of the hearing set within  
56 twenty-one days of the order.

57 (iv) The order to show cause shall clearly state that if the person who filed the lien or legal  
58 process fails to appear at the time and place noticed in the order, then the lien or legal process  
59 shall be released or dismissed, deemed fraudulent and the person shall be subject to the penalties  
60 provided for in this section.

61 (v) If a hearing takes place or if, on its own motion, the circuit court determines that the  
62 lien or legal process is fraudulent, then the circuit court shall release or dismiss it and subject the  
63 person to the penalties provided for in this section.

64 (vi) If the circuit court determines that the lien or legal process is valid, then the circuit  
65 court shall issue an order stating such and may award reasonable attorney's fees, court costs  
66 and other expenses to the prevailing party.

67 (j) A person's lack of belief in the jurisdiction or authority of this state or of the United  
68 States is no defense to prosecution of a civil or criminal action under this section.

69 (k)(1) Nothing in this section prohibits or in any way limits the lawful acts of a legitimate

70 public official or employee.

71 (2) Nothing in this section prohibits or in any way limits a person's lawful and legitimate  
 72 right to freely assemble, express opinions or designate group affiliation.

73 (3) Nothing in this section prohibits or in any way limits a person's lawful and legitimate  
 74 access to a tribunal of this state nor does it prevent a person from instituting or responding to a  
 75 lawful action.

**~~§61-5-25. Procuring the summoning of biased juror by party other than officer; penalty.~~**  
**Impersonation; penalty; subsequent offenses.**

1 If any person shall procure or attempt to procure a juror to be summoned, with intent that  
 2 such juror shall find a verdict for or against either party to an action or shall be biased in his or her  
 3 conduct as such juror, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be  
 4 fined ~~not exceeding \$500.~~ (a) Any person who knowingly impersonates or purports to exercise  
 5 any function of a public official, employee, tribunal, or official proceeding without legal authority to  
 6 do so, with the intent to induce a person to submit to or rely on the fraudulent authority of the  
 7 person is guilty of a Class I misdemeanor.

8 (b) Any person who falsely represents himself or herself to be a law-enforcement officer,  
 9 or law-enforcement official. or to be under the order or direction of any such person, or any person  
 10 not a law-enforcement officer, or law-enforcement official who wears, the uniform prescribed for  
 11 such persons, or the badge or other insignia, adopted for use by such persons with the intent to  
 12 deceive another person is guilty of a Class I misdemeanor. For purposes of this section, the terms  
 13 law-enforcement officer and law-enforcement official are defined by §30-29-1 of this code, except  
 14 that such terms may not include members of the Division of Public Safety and may not include  
 15 individuals hired by nonpublic entities for the provision of security services.

16 (c) *Second offense.* -- Any person convicted of a second or subsequent offense under this  
 17 section is guilty of a Class VI felony.

**§61-5-25a. Discrimination against employee summoned for jury duty; penalty.**

1 [Repealed.]

**§61-5-26. Contempt of court; what constitutes contempt; jury trial; presence of defendant.**

**Failure to perform official duties; penalty.**

2 The courts and the judges thereof may issue attachment for contempt and punish them  
 3 summarily only in the following cases: (a) Misbehavior in the presence of the court, or so near  
 4 thereto as to obstruct or interrupt the administration of justice; (b) violence or threats of violence  
 5 to a judge or officer of the court, or to a juror, witness, or party going to, attending or returning  
 6 from the court, for or in respect of any act or proceeding had, or to be had, in such court; (c)  
 7 misbehavior of an officer of the court, in his or her official character; (d) disobedience to or  
 8 resistance of any officer of the court, juror, witness, or other person, to any lawful process,  
 9 judgment, decree or order of the said court. No court shall, without a jury, for any such contempt  
 10 as is mentioned in subdivision (a) of this section, impose a fine exceeding \$50, or imprison more  
 11 than ten days. But in any such case the court may impanel a jury (without an indictment or any  
 12 formal pleading) to ascertain the fine or imprisonment proper to be inflicted, and may give  
 13 judgment according to the verdict. No court shall impose a fine for contempt, unless the defendant  
 14 be present in court, or shall have been served with a rule of the court to show cause, on some  
 15 certain day, and shall have failed to appear and show cause. Any person holding any office or  
 16 appointment in this state, who willfully fails or refuses to perform any duty required of him or her  
 17 by law, is guilty of a petty offense, and, upon conviction thereof, shall, if no other punishment is  
 18 prescribed by law, shall be fined not exceeding \$1000.

**§61-5-27. Intimidation of and retaliation against public officers and employees, jurors, and  
 witnesses; fraudulent official proceedings and legal processes against public  
 officials and employees; penalties. Failure to meet an obligation to pay support to  
 a minor; penalties.**

1 (a) Definitions.— As used in this section:

2 (1) "Fraudulent" means not legally issued or sanctioned under the laws of this state or of

3 ~~the United States, including forged, false, and materially misstated;~~

4       ~~(2) “Legal process” means an action, appeal, document instrument, or other writing issued,~~  
5 ~~filed, or recorded to pursue a claim against person or property, exercise jurisdiction, enforce a~~  
6 ~~judgment, fine a person, put a lien on property, authorize a search and seizure, arrest a person,~~  
7 ~~incarcerate a person, or direct a person to appear, perform, or refrain from performing a specified~~  
8 ~~act. “Legal process” includes, but is not limited to, a complaint, decree, demand, indictment,~~  
9 ~~injunction, judgment, lien, motion, notice, order, petition, pleading, sentence, subpoena,~~  
10 ~~summons, warrant, or writ;~~

11       ~~(3) “Official proceeding” means a proceeding involving a legal process or other process of~~  
12 ~~a tribunal of this state or of the United States;~~

13       ~~(4) “Person” means an individual, group, association, corporation, or any other entity;~~

14       ~~(5) “Public official or employee” means an elected or appointed official or employee of a~~  
15 ~~state or federal court, commission, department, agency, political subdivision, or any governmental~~  
16 ~~instrumentality;~~

17       ~~(6) “Recorder” means a clerk or other employee in charge of recording instruments in a~~  
18 ~~court, commission, or other tribunal of this state or of the United States; and~~

19       ~~(7) “Tribunal” means a court or other judicial or quasi-judicial entity, or an administrative,~~  
20 ~~legislative, or executive body, or that of a political subdivision, created or authorized under the~~  
21 ~~constitution or laws of this state or of the United States.~~

22       ~~(b) Intimidation; harassment. — It is unlawful for a person to use intimidation, physical~~  
23 ~~force, harassment, or a fraudulent legal process or official proceeding, or to threaten to do so~~  
24 ~~where such threat is directed at inciting or producing imminent lawless action of a violent nature~~  
25 ~~that could cause bodily harm and is likely to incite or produce such action or to attempt to do so,~~  
26 ~~with the intent to:~~

27       ~~(1) Impede or obstruct a public official or employee from performing his or her official~~  
28 ~~duties;~~

29 ~~(2) Impede or obstruct a juror or witness from performing his or her official duties in an~~  
30 ~~official proceeding;~~

31 ~~(3) Influence, delay, or prevent the testimony of any person in an official proceeding; or~~

32 ~~(4) Cause or induce a person to: (A) Withhold testimony, or withhold a record, document~~  
33 ~~or other object from an official proceeding; (B) alter, destroy, mutilate, or conceal a record,~~  
34 ~~document, or other object impairing its integrity or availability for use in an official proceeding; (C)~~  
35 ~~evade an official proceeding summoning a person to appear as a witness or produce a record,~~  
36 ~~document, or other object for an official proceeding; or (D) be absent from an official proceeding~~  
37 ~~to which such person has been summoned.~~

38 ~~(c) Retaliation.— It is unlawful for a person to cause injury or loss to person or property,~~  
39 ~~or to threaten to do so where such threat is directed at inciting or producing imminent lawless~~  
40 ~~action of a violent nature that could cause bodily harm and is likely to incite or produce such action~~  
41 ~~or to attempt to do so, with the intent to:~~

42 ~~(1) Retaliate against a public official or employee for the performance or nonperformance~~  
43 ~~of an official duty;~~

44 ~~(2) Retaliate against a juror or witness for performing his or her official duties in an official~~  
45 ~~proceeding; or~~

46 ~~(3) Retaliate against any other person for attending, testifying, or participating in an official~~  
47 ~~proceeding, or for the production of any record, document, or other object produced by a person~~  
48 ~~in an official proceeding.~~

49 ~~(d) Penalty.— A person convicted of an offense under subsections (b) or (c) of this~~  
50 ~~section is guilty of a felony and shall be confined in a correctional facility not less than one nor~~  
51 ~~more than 10 years, fined not more than \$2,000, or both.~~

52 ~~(e) Civil cause of action.— A person who violates this section is liable in a civil action to~~  
53 ~~any person harmed by the violation for injury or loss to person or property incurred as a result of~~  
54 ~~the commission of the offense and for reasonable attorney's fees, court costs, and other expenses~~

55 ~~incurred as a result of prosecuting a civil action commenced under this subsection, which is not~~  
56 ~~the exclusive remedy of a person who suffers injury or loss to person or property as a result of a~~  
57 ~~violation of this section.~~

58 ~~(f) Civil sanctions. — In addition to the criminal and civil penalties set forth in this section,~~  
59 ~~any fraudulent official proceeding or legal process brought in a tribunal of this state in violation of~~  
60 ~~this section shall be dismissed by the tribunal and the person may be ordered to reimburse the~~  
61 ~~aggrieved person for reasonable attorney's fees, court costs, and other expenses incurred in~~  
62 ~~defending or dismissing such action.~~

63 ~~(1) Refusal to record. — A recorder may refuse to record a clearly fraudulent lien or other~~  
64 ~~legal process against a public official or employee or his or her property. The recorder does not~~  
65 ~~have a duty to inspect or investigate whether a lien or other legal process is fraudulent, nor is the~~  
66 ~~recorder liable for refusing to record a lien or other legal process that the recorder believes is in~~  
67 ~~violation of this section; and~~

68 ~~(2) If a fraudulent lien or other legal process against a public official or employee or his or~~  
69 ~~her property is recorded then:~~

70 ~~(A) Request to release lien. — The public official or employee may send a written request~~  
71 ~~by certified mail to the person who filed the fraudulent lien or legal process requesting the person~~  
72 ~~to release or dismiss the lien or legal process. If such lien or legal process is not properly released~~  
73 ~~or dismissed within 21 days, then it shall be inferred that the person intended to harass the public~~  
74 ~~official or employee in violation of subsection (b) of this section and shall be subject to the criminal~~  
75 ~~penalties in subsection (d) of this section and any other remedies provided in this section; or~~

76 ~~(B) Notice of fraudulent lien. — A government attorney on behalf of the public official or~~  
77 ~~employee may record a notice of fraudulent lien or legal process with the recorder who accepted~~  
78 ~~the lien or legal process for filing. Such notice shall invalidate the fraudulent lien or legal process~~  
79 ~~and cause it to be removed from the records. No filing fee shall be charged for the filing of the~~  
80 ~~notice.~~

81 ~~(g) A person's lack of belief in the jurisdiction or authority of this state or of the United~~  
82 ~~States is no defense to prosecution of a civil or criminal action under this section.~~

83 ~~(h)(1) Nothing in this section prohibits or in any way limits the lawful acts of legitimate~~  
84 ~~public officials or employees;~~

85 ~~(2) Nothing in this section prohibits or in any way limits a person's lawful and legitimate~~  
86 ~~right to freely assemble, express opinions, or designate group affiliation; or~~

87 ~~(3) Nothing in this section prohibits or in any way limits a person's lawful and legitimate~~  
88 ~~access to a tribunal of this state or prevents a person from instituting or responding to a lawful~~  
89 ~~action.~~

90 (a) A person who: (1) Repeatedly and willfully fails to pay his or her court-ordered support  
91 which he or she can reasonably provide and which he or she knows he or she has a duty to  
92 provide to a minor; and (2) is subject to court order to pay any amount for the support of a minor  
93 child and is delinquent in meeting the full obligation established by the order and has been  
94 delinquent for a period of at least six months'duration, is guilty of a Class I misdemeanor.

95 (b) A person who repeatedly and willfully fails to pay his or her court-ordered support which  
96 he or she can reasonably provide and which he or she knows he or she has a duty to provide to  
97 a minor by virtue of a court or administrative order and the failure results in twelve months without  
98 payment of support that remains unpaid, is guilty of a Class VI felony.

**§61-5-27a. Fraudulent official proceedings; causing a public employee or official to file a  
fraudulent legal process; impersonation of a public official, employee or tribunal;  
penalties.**

99 [Repealed.]

**§61-5-28. Failure to perform official duties; penalty.**

100 [Repealed.]

**§61-5-29. Failure to meet an obligation to pay support to a minor; penalties.**

101 [Repealed.]

**ARTICLE 5A. BRIBERY AND CORRUPT PRACTICES.****§61-5A-9. Penalties; disqualification to hold office; statute of limitations for misdemeanor offenses.**

1 (a) Any person who violates any of the provisions of section three of this article shall be  
2 guilty of a Class VI felony and, ~~upon conviction thereof, shall be punished, if an individual, by~~  
3 ~~imprisonment in the penitentiary not less than one nor more than ten years, and, if a corporation,~~  
4 ~~by a fine of not exceeding \$50,000.~~ Any person convicted of violating any of the provisions of  
5 section three of this article shall also be forever disqualified from holding any office or position of  
6 honor, trust or profit of government in this state.

7 (b) Any person who violates any of the provisions of section four of this article shall be  
8 guilty of a Class I misdemeanor, ~~and, upon conviction thereof, shall be punished by confinement~~  
9 ~~in jail not less than three months nor more than one year or by a fine of not exceeding \$5,000 or,~~  
10 ~~in the discretion of the court, by both such confinement and fine.~~

11 (c) Any person who violates any of the provisions of section five of this article shall be  
12 guilty of a Class I misdemeanor, ~~and, upon conviction thereof, shall be punished by confinement~~  
13 ~~in jail not less than three months nor more than one year or by a fine of not exceeding \$5,000 or,~~  
14 ~~in the discretion of the court, by both such confinement and fine,~~ unless such person threatened  
15 to commit a crime or made a threat with the purpose to influence an administrative or judicial  
16 proceeding, in which event, he or she shall, upon conviction thereof, be guilty of a Class VI felony  
17 and, additionally, shall also be forever disqualified from holding any office or position of honor,  
18 trust or profit of government in this state and, ~~shall be punished as specified in subsection (a) of~~  
19 ~~this section for a violation of any of the provisions of section three of this article.~~

20 (d) Any person who violates any of the provisions of section six or section seven of this  
21 article shall be guilty of a Class I misdemeanor, ~~and, upon conviction thereof, shall be punished~~  
22 ~~by confinement in jail not less than three months nor more than one year or by a fine of not less~~  
23 ~~than \$50 nor more than \$1,000 or, in the discretion of the court, by both such confinement and~~

24 fine.

25 (e) Notwithstanding the provisions of §61-11-9 of this code or any other provision of law  
26 to the contrary, a prosecution for a misdemeanor under the provisions of this article shall be  
27 commenced within six years after the offense was committed.

## **ARTICLE 6. CRIMES AGAINST THE PEACE.**

### **§ 61-6-1. Suppression of riots and unlawful assemblages.**

1 All members of the West Virginia State Police, the Division of Protective Services, all  
2 sheriffs within their respective counties and all mayors within their respective jurisdiction, may  
3 suppress riots, routs, and unlawful assemblages. It shall be the duty of each of them to go among,  
4 or as near as may be with safety, to persons riotously, tumultuously, or unlawfully assembled,  
5 and in the name of the law command them to disperse; and if they shall not thereupon immediately  
6 and peaceably disperse, such member of the West Virginia State Police, or of the Division of  
7 Protective Services, sheriff or mayor giving the command, and any other present, shall command  
8 the assistance of all persons present, and of all or any part of other law-enforcement personnel  
9 available to him or her, as need be, in arresting and securing those so assembled. ~~If any person  
10 present, on being required to give his or her assistance, depart, or fail to obey, he or she shall be  
11 deemed a rioter.~~

### **§ 61-6-1a. Control of riots and unlawful assemblages.**

1 Members of the West Virginia State Police, the Division of Protective Services, sheriffs  
2 and mayors, and those acting under their order, may, when engaged in suppressing a riot, rout  
3 or unlawful assemblage, cordon off any area or areas threatened by such riot, rout or unlawful  
4 assemblage, and may take all actions which are necessary and reasonable under the emergency  
5 to restore law and order, and such actions may be, but are not limited to, the following:

6 (a) Prohibit the sale, offering for sale, dispensing, furnishing, or transportation of firearms  
7 or other dangerous weapons, ammunition, dynamite, or other dangerous explosives in, to or from  
8 such areas.

9 (b) Prohibit the sale, offering for sale, dispensing, furnishing, or consumption of alcoholic  
10 beverages or nonintoxicating beer in a public place in such areas, and prohibit the transportation  
11 of alcoholic beverages or nonintoxicating beer in, to, or from such areas.

12 (c) Impose curfews, as required, to control movement of persons in, to, and from such  
13 areas.

14 (d) Enter a private dwelling or other building or other private place in such areas when in  
15 fresh pursuit of a rioter, when in search of a sniper who has fired upon a person from such a  
16 dwelling or other building or place or when in search of firearms, other dangerous weapons,  
17 ammunition, dynamite, or other dangerous explosives when there is reason to believe that such  
18 items are stored in the said dwelling, building, or place and that they will be removed therefrom  
19 before a search warrant could be obtained.

20 No person shall willfully fail to obey a lawful order of any mayor, sheriff, deputy sheriff,  
21 municipal police officer, member of the West Virginia State Police, or the Division of Protective  
22 Services, or other officer, given pursuant to this section

23 Any person who violates an order given pursuant to the authority of this section shall be  
24 guilty of a Class 2 misdemeanor, ~~and, upon conviction thereof, shall be fined not more than \$500,~~  
25 ~~or imprisoned in the county jail not more than six months, or both fined and imprisoned.~~

**§61-6-1b. Disorderly conduct; penalty.**

1 (a) Any person who, in a public place, any office or office building of the State of West  
2 Virginia, or in the State Capitol complex, or on any other property owned, leased, occupied or  
3 controlled by the State of West Virginia, a mobile home park, a public parking area, a common  
4 area of an apartment building or dormitory, or a common area of a privately owned commercial  
5 shopping center, mall or other group of commercial retail establishments, disturbs the peace of  
6 others by violent, profane, indecent or boisterous conduct or language or by the making of  
7 unreasonably loud noise that is intended to cause annoyance or alarm to another person, and  
8 who persists in such conduct after being requested to desist by a law-enforcement officer acting

9 in his or her lawful capacity, is guilty of the petty offense of disorderly conduct. ~~disorderly conduct,~~  
 10 ~~a misdemeanor and, upon conviction thereof, may be confined in jail for twenty-four hours or fined~~  
 11 ~~not more than \$100. Provided, That nothing~~ Nothing in this subsection ~~should~~ may be construed  
 12 as a deterrence to the lawful and orderly public right to demonstrate in support or protest of public  
 13 policy issues.

14 (b) For purposes of this section:

15 “Mobile home park” means a privately owned residential housing area or subdivision  
 16 wherein the dwelling units are comprised mainly of mobile homes and wherein the occupants of  
 17 such dwelling units share common elements for purposes of ingress and egress, parking,  
 18 recreation and other like residential purposes.

19 “Mobile home” means a moveable or portable unit, designed, and constructed to be towed  
 20 on its own chassis (comprised of frame and wheels) and designed to be connected to utilities for  
 21 year-round occupancy. The term includes: (A) Units containing parts that may be folded,  
 22 collapsed, or telescoped when being towed and that may be expanded to provide additional cubic  
 23 capacity; and (B) units composed of two or more separately towable components designed to be  
 24 joined into one integral unit capable of being separated again into the components for repeated  
 25 towing.

26 “Public parking area” means an area, whether publicly or privately owned or maintained,  
 27 open to the use of the public for parking motor vehicles.

**§61-6-2. Commitment and recognizance of rioters.**

1 [Repealed]

**§61-6-3. Failure of member of West Virginia State Police officer, officer of the Division of  
 Protective Services, mayor, or sheriff to exercise powers at riots and unlawful  
 assemblages; penalty.**

1 [Repealed]

**§61-6-6. Destruction of building by rioters; penalty therefor and for rioting without such**

**injury Mobs and lynching; penalties; liability of county or city.**

1        ~~If any person engaged in a riot, rout or unlawful assemblage, pull down or destroy, in~~  
2 ~~whole or in part, any dwelling house, courthouse, jail, prison, asylum, hospital, school or college~~  
3 ~~building, or any public building of any character, or assist therein, he or she shall be guilty of a~~  
4 ~~felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than~~  
5 ~~ten years; and though no such building be injured, every rioter, and every person unlawfully or~~  
6 ~~tumultuously assembled, shall be guilty of a misdemeanor, and, upon conviction, shall be confined~~  
7 ~~in jail not more than one year and fined not exceeding \$500.~~

8        Any collection of individuals, five or more in number, assembled for the unlawful purpose  
9 of offering violence to the person or property of anyone supposed to have been guilty of a violation  
10 of the law, or for the purpose of exercising correctional or regulative powers over any person or  
11 persons by violence, and without lawful authority, shall be regarded and designated as a “mob”  
12 or “riotous assemblage.”

13        The term “serious injury,” for the purposes of this section, shall include any injury to  
14 property which shall cause damage to the owner thereof, or any injury to the person which shall  
15 temporarily or permanently disable the person injured from earning a livelihood.

16        The putting to death of any person within this state by a mob or riotous assemblage shall  
17 be murder, and every person participating in such mob or riotous assemblage by which a person  
18 is put to death is guilty of murder, and, upon conviction thereof, shall be punished as the law  
19 provides in other cases of murder.

20        Persons who compose a mob or riotous assemblage, with the intent to inflict damage or  
21 injury to the person or property of any individual charged with crimes, or, under the pretense of  
22 exercising correctional powers over such person or persons by violence, and without lawful  
23 authority, are guilty of a Class II misdemeanor. Persons who compose a mob or riotous  
24 assemblage, and who inflicts damage or injury to the person or property of any individual charged  
25 with crimes, are guilty of a Class VI felony.

26 Persons composing a mob or riotous assemblage under the provisions of this section,  
27 who, by violence, inflict serious injury to the property or to the person of any other person upon  
28 the pretense of exercising correctional or regulative powers over such person or persons, and  
29 without authority of the law, are guilty of a Class V felony, and, upon conviction thereof, shall be  
30 imprisoned in a state correctional facility not exceeding five years; and any person suffering  
31 serious injury to his or her person or his or her property by a mob, shall have an action against  
32 the county or city in which serious injury is inflicted, for such damages as he or she may sustain,  
33 to an amount not to exceed \$50,000.

34 The county, in which the person or persons charged with a crime are taken from a state,  
35 county, or municipal officer, and lynched and put to death, shall be subject to a forfeiture of  
36 \$500,000, which may be recovered by appropriate action therefor, in the name of the personal  
37 representative of the person put to death, for the use of his or her dependent family or estate. The  
38 action may be brought in any state court. If the forfeiture is not paid upon recovery of judgment  
39 therefor, the court rendering such judgment may enforce the payment thereof, and may compel  
40 the levy and collection of a tax therefor, or otherwise compel the payment thereof by mandamus  
41 or other appropriate process, and every officer of the county, and every other person who  
42 disobeys or fails to comply with any lawful order of the court, shall be liable to punishment  
43 according to law as for contempt and to any other penalties provided by law therefor.

44 The fact that any person so put to death was taken from any state, county, or municipal  
45 officer in one county, by a mob or riotous assemblage of five or more persons, and transported  
46 out of that county before the killing took place, and the fact that the killing occurred out of the  
47 county from which such person may have been taken from the state, county or municipal officer,  
48 may not relieve the county from which he or she was taken from the liability provided by this  
49 section. If the person so taken from such officer or officers is transported from and put to death  
50 and lynched in another county outside of the county wherein he or she was taken from such officer  
51 or officers, no county through which that person was transported, or in which that person has

52 been lynched and put to death, shall be liable to damages hereunder, unless it is clearly shown  
53 that the officers or citizens in such county or counties participated in, aided, abetted or encouraged  
54 such unlawful putting to death.

55 Every state, county or municipal officer having the duty or power of preservation or  
56 conservation of the peace at the time and place of any such putting to death, or the committing of  
57 serious injury to the person or to the property as prescribed in this section, who, having reasonable  
58 cause to believe that the same is to be done, or is attempted to be done, and neglects or omits to  
59 prevent the same, and every such officer from whose custody such person may be taken by the  
60 mob or riotous assemblage, and put to death by the same, or whose property or person suffers  
61 serious injury at the hands of such mob or riotous assemblage, is guilty of negligence in the  
62 discharge of his or her official duty, and the county or city which shall have been sued and  
63 compelled to pay damages as herein provided may recover same from such negligent officer by  
64 appropriate action upon his or her official bond.

65 In any prosecution for any of the offenses defined herein, and any action for the forfeiture  
66 imposed as herein provided, every person who has participated in the lynching or in the putting  
67 to death of, or in the infliction of great bodily violence or serious injury to the person or the property  
68 of any person, without authority of the law, and every person who entertains or has expressed  
69 any opinion in favor of lynching or in the justification or excuse thereof, or whose character,  
70 conduct, or opinions have been or are such as, in the judgment of the court, may tend to disqualify  
71 him or her for an impartial and unprejudiced trial of the cause, shall be disqualified to serve as a  
72 juror, and in any such action or prosecution, any attorney interested in the case shall be entitled  
73 to make full inquiry thereof and to produce evidence thereon; and every person who refuses to  
74 answer any inquiry touching his or her qualifications on the ground that he or she may thereby  
75 incriminate himself or herself shall be disqualified.

**§61-6-7. Conspiracy to inflict injury to persons or property; infliction of injury or death in  
pursuance thereof; penalties.**

1 [Repeal]

**~~§61-6-8. Release or rescue of person in custody charged or convicted under §61-6-7; penalty. Disturbance of schools, societies, and other assemblies; penalty.~~**

1 If any person, by force, or other unlawful means, shall release or rescue, or attempt to  
2 release or rescue, a person in prison or other custody, charged with, or convicted of an offense  
3 under the provisions of the preceding section of this article, he or she shall be guilty of a felony,  
4 and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten  
5 years.

6 Any person who willfully interrupts, molests or disturbs any free school, or other school, a  
7 school exhibition, or any literary society, or any other society or meeting formed or convened for  
8 intellectual, social or moral improvement, or for improvement in music, either vocal or  
9 instrumental, or for any moral or social amusement, or any other society organized or carried on  
10 under or in pursuance of the laws of this state, or any fourth of July celebration, Christmas tree,  
11 or church festival, or any other festival, or any society, lawfully carried on, is guilty of a Class III  
12 misdemeanor.

**~~§61-6-9. Intimidation of witness for state in conspiracy prosecutions; penalties. Loitering on school property; penalty; exceptions.~~**

1 If any person shall, by threats, menaces, or otherwise, intimidate, or attempt to intimidate,  
2 a witness for the state in any prosecution under the provisions of sections seven and eight of this  
3 article, for the purpose of preventing the attendance of such witness at the trial of such case, or  
4 shall in any way or manner prevent, or attempt to prevent, the attendance of any such witness at  
5 such trial, he or she shall be guilty of a felony, and, upon conviction, shall be confined in the  
6 penitentiary not less than one nor more than ten years, or he or she may, in the discretion of the  
7 court, be confined in jail not less than three nor more than twelve months, and fined not less than  
8 \$100 nor more than \$5,000.

9 A person, not a student in regular attendance, may not loiter in or about any school, school

10 building or school grounds in violation of any posted rules or regulations governing the use of any  
11 such school without written permission from the principal.

12 Any person who violates the provisions of this section is guilty of a Class II misdemeanor.  
13 Upon a second or subsequent conviction, any such person is guilty of a Class I misdemeanor.

**§61-6-10 Reward for arrest in conspiracy cases; employment of special policemen and  
detectives. Camping upon governmental grounds or lawns; penalties; public  
nuisance.**

1 ~~The Governor is hereby authorized, whenever in his or her opinion it is proper to do so, to~~  
2 ~~offer rewards, and employ special policemen and detectives, and to employ any and all means in~~  
3 ~~his or her power, including the employment of any portion of the military forces of the state, to~~  
4 ~~secure the apprehension of any and all persons belonging to any such unlawful combination or~~  
5 ~~who shall be charged with the commission of any offense mentioned in the seventh, eighth and~~  
6 ~~ninth sections of this article.~~

7 Any person who goes upon the ground or lawn surrounding or adjacent to (1) the state  
8 Capitol building or any state office building which is a part of the state Capitol complex, or (2) a  
9 county courthouse, or (3) any municipal office building where the principal business of the  
10 municipality is conducted, which ground or lawn is owned by or leased to the State of West  
11 Virginia, the county, or such municipality, as the case may be, and place, erect or construct or  
12 attempt to place, erect or construct for himself or herself or others shelter accommodations  
13 thereon or use any such erected shelter accommodations, without the written permission first had  
14 and obtained of the Governor, the county court, or the governing body of the municipality, as the  
15 case may be, is guilty of a Class III misdemeanor, and any such shelter accommodations are  
16 hereby constituted a public nuisance which may be abated at the expense of any such person.  
17 Each day upon which any violation of the provisions of this section continues shall constitute a  
18 separate offense.

**§61-6-11. False reports concerning bombs or other explosive devices; penalties.**

1 (a) Any person who imparts or conveys or causes to be imparted or conveyed any false  
2 information, knowing or having reasonable cause to believe the information to be false,  
3 concerning the presence of any bomb or other explosive device in, at, on, near, under or against  
4 any dwelling house, structure, improvement, building, bridge, motor vehicle, vessel, boat, railroad  
5 car, airplane or other place or concerning an attempt or alleged attempt being made or to be made  
6 to so place or explode any bomb or other explosive device is guilty of a Class VI felony.

7 (b) If any person violates any provision of this section and the violation directly causes  
8 economic harm as defined in subsection (d) of this section, in addition to any other penalty, the  
9 circuit court may order the offender to pay the victim or victims restitution, in accordance with §61-  
10 11A-1 et seq. of this code, for economic loss caused by the violation in an amount not to exceed  
11 the economic harm suffered. Nothing in this section may be construed to limit the authority of the  
12 circuit court to order restitution pursuant to other provisions of this code.

13 (c) Notwithstanding any provision of this section to the contrary, any person violating the  
14 provisions of subsection (a) of this section whose violation of the subsection results in another  
15 suffering serious bodily injury is guilty of a Class V felony. Each injury resulting from a violation of  
16 subsection (a) of this section constitutes a separate offense.

17 (d) As used in this section, "economic harm" means all direct, incidental and consequential  
18 pecuniary harm suffered by a victim as a result of criminal conduct. Economic harm includes, but  
19 is not limited to, the following:

20 (1) All wages, salaries or other compensation lost as a result of the criminal conduct;

21 (2) The cost of all wages, salaries or other compensation paid to employees for time those  
22 employees are prevented from working as a result of the criminal conduct;

23 (3) The cost of all wages, salaries or other compensation paid to employees for time those  
24 employees spent in reacting to the results of the criminal conduct; or

25 (4) The overhead costs incurred for the time that a business is shut down as a result of  
26 the criminal conduct.

~~§61-6-12. Mobs and lynchings; penalties; liability of county or city. Falsely reporting an emergency incident.~~

1 Any collection of individuals, five or more in number, assembled for the unlawful purpose  
2 of offering violence to the person or property of anyone supposed to have been guilty of a violation  
3 of the law, or for the purpose of exercising correctional or regulative powers over any person or  
4 persons by violence, and without lawful authority, shall be regarded and designated as a "mob"  
5 or "riotous assemblage."

6 The term "serious injury," for the purposes of this section, shall include any injury to  
7 property which shall cause damage to the owner thereof, or any injury to the person which shall  
8 temporarily or permanently disable the person injured from earning a livelihood.

9 The putting to death of any person within this state by a mob or riotous assemblage shall  
10 be murder, and every person participating in such mob or riotous assemblage by which a person  
11 is put to death shall be guilty of murder, and, upon conviction thereof, shall be punished as the  
12 law provides in other cases of murder.

13 Any person or persons who shall compose a mob or riotous assemblage, with the intent  
14 to inflict damage or injury to the person or property of any individual charged with crimes, or, under  
15 the pretense of exercising correctional powers over such person or persons by violence, and  
16 without lawful authority, shall be subject to a fine of not less than \$100 nor more than \$1,000, and  
17 may be imprisoned, in the discretion of the court, in the county jail not less than thirty days nor  
18 more than twelve months for each and every offense. Any person or persons who shall compose  
19 a mob or riotous assemblage, and who shall inflict damage or injury to the person or property of  
20 any individual charged with crimes, shall be guilty of a felony and, upon conviction, shall be  
21 confined in the penitentiary not less than one nor more than ten years for each and every offense.

22 Any person or persons composing a mob or riotous assemblage under the provisions of  
23 this section, who shall, by violence, inflict serious injury to the property or to the person of any  
24 other person upon the pretense of exercising correctional or regulative powers over such person

25 ~~or persons, and without authority of the law, shall be deemed guilty of a felony, and, upon~~  
26 ~~conviction thereof, shall be confined in the penitentiary not exceeding five years; and any person~~  
27 ~~suffering serious injury to his or her person or his or her property by a mob, shall have an action~~  
28 ~~against the county or city in which such serious injury is inflicted, for such damages as he or she~~  
29 ~~may sustain, to an amount not to exceed \$5,000.~~

30 ~~The county in which such person charged with a crime has been taken from a state, county~~  
31 ~~or municipal officer, and lynched and put to death, shall be subject to a forfeiture of \$5,000, which~~  
32 ~~may be recovered by appropriate action therefor, in the name of the personal representative of~~  
33 ~~the person put to death, for the use of his or her dependent family or estate. Such action may be~~  
34 ~~brought in any state court. If such forfeiture is not paid upon recovery of judgment therefor, the~~  
35 ~~court rendering such judgment shall have power to enforce the payment thereof, and may compel~~  
36 ~~the levy and collection of a tax therefor, or otherwise compel the payment thereof by mandamus~~  
37 ~~or other appropriate process, and every officer of such county, and every other person who~~  
38 ~~disobeys or fails to comply with any lawful order of the court, shall be liable to punishment~~  
39 ~~according to law as for contempt and to any other penalties provided by law therefor.~~

40 ~~The fact that any person so put to death shall have been taken from any state, county or~~  
41 ~~municipal officer in one county, by a mob or riotous assemblage of five or more persons, and~~  
42 ~~transported out of such county before such killing shall have taken place, and the fact that such~~  
43 ~~killing occurred out of the county from which such person may have been taken from such state,~~  
44 ~~county or municipal officer, shall not relieve such county from which he or she was taken from the~~  
45 ~~liability provided by this section. And if the person so taken from such officer or officers shall be~~  
46 ~~transported from and put to death and lynched in another county outside of the county wherein~~  
47 ~~he or she was taken from such officer or officers, no county through which such person may have~~  
48 ~~been transported, or in which such person has been lynched and put to death, shall be liable to~~  
49 ~~damages hereunder, unless it is clearly shown that the officers or citizens in such county or~~  
50 ~~counties participated in, aided, abetted or encouraged such unlawful putting to death.~~

51 ~~Every state, county or municipal officer having the duty or power of preservation or~~  
52 ~~conservation of the peace at the time and place of any such putting to death, or the committing of~~  
53 ~~serious injury to the person or to the property as prescribed in this section, who, having reasonable~~  
54 ~~cause to believe that the same is to be done, or is attempted to be done, and neglects or omits to~~  
55 ~~prevent the same, and every such officer from whose custody such person may be taken by such~~  
56 ~~mob or riotous assemblage, and put to death by the same, or whose property or person suffers~~  
57 ~~serious injury at the hands of such mob or riotous assemblage, shall be guilty of negligence in the~~  
58 ~~discharge of his or her official duty, and the county or city which shall have been sued and~~  
59 ~~compelled to pay damages as herein provided may recover same from such negligent officer by~~  
60 ~~appropriate action upon his or her official bond.~~

61 ~~In any prosecution for any of the offenses defined herein, and any action for the forfeiture~~  
62 ~~imposed as herein provided, every person who has participated in the lynching or in the putting~~  
63 ~~to death of, or in the infliction of great bodily violence or serious injury to the person or the property~~  
64 ~~of any person, without authority of the law, and every person who entertains or has expressed~~  
65 ~~any opinion in favor of lynching or in the justification or excuse thereof, or whose character,~~  
66 ~~conduct, or opinions have been or are such as, in the judgment of the court, may tend to disqualify~~  
67 ~~him or her for an impartial and unprejudiced trial of the cause, shall be disqualified to serve as a~~  
68 ~~juror, and in any such action or prosecution, any attorney interested in the case shall be entitled~~  
69 ~~to make full inquiry thereof and to produce evidence thereon; and every person who refuses to~~  
70 ~~answer any inquiry touching his or her qualifications on the ground that he or she may thereby~~  
71 ~~incriminate himself or herself shall be disqualified as aforesaid.~~

72 A person is guilty of reporting a false emergency incident when knowing the information  
73 reported, conveyed, or circulated is false or baseless, he or she:

74 (1) Initiates or circulates a false report or warning of or impending occurrence of a fire,  
75 explosion, crime, catastrophe, accident, illness, or other emergency under circumstances in which  
76 it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance

77 apparatus, one or more rescue vehicles or other emergency apparatus might be summoned; or

78 (2) Reports, by word or action, to any official or quasi-official agency or organization having  
 79 the function of dealing with emergencies involving danger to life or property, an alleged  
 80 occurrence or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness or  
 81 other emergency in which it is likely that public alarm or inconvenience will result or that firefighting  
 82 apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus  
 83 might be summoned, which did not occur, does not in fact exist; or

84 (3) Reports to a law-enforcement officer or agency the alleged occurrence of any offense  
 85 or incident which did not in fact occur or an allegedly impending occurrence of an offense or  
 86 incident which is not in fact about to occur or false information relating to an actual offense or  
 87 incident or to the alleged implication of some person therein; or

88 (4) Without just cause, calls, or summons by telephone, fire alarm system or otherwise,  
 89 any firefighting apparatus, ambulance apparatus, rescue vehicles or other emergency vehicles.

90 Any person who violates this section is guilty of a Class II misdemeanor.

**§61-6-13. ~~Disturbance of religious worship; penalty.~~ Willful disruption of governmental processes; offenses occurring at State Capitol Complex; penalties.**

1 ~~If any person willfully interrupt, molest or disturb any assembly of people met for the~~  
 2 ~~worship of God, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be~~  
 3 ~~confined in jail not more than six months and fined not less than \$25 nor more than \$100. Any~~  
 4 ~~officer may put such offender under restraint during religious worship, and the court trying the~~  
 5 ~~case may require bond or recognizance of him or her for not more than one year to be of good~~  
 6 ~~behavior.~~

7 (a) Any person who willfully interrupts or molests the orderly and peaceful process of any  
 8 department, division, agency, or branch of state government or of its political subdivisions, is guilty  
 9 of a Class II misdemeanor: *Provided*, That any assembly in a peaceable, lawful, and orderly  
 10 manner for a redress of grievances may not be a violation of this section.

11 (b) It is unlawful for any person to bring upon the State Capitol Complex any weapon as  
 12 defined in §61-7-2 of this code: *Provided*, That a person who may lawfully possess a firearm may  
 13 keep a firearm in his or her motor vehicle upon the State Capitol Complex if the vehicle is locked  
 14 and the weapon is out of normal view. It is unlawful for any person to willfully deface any trees,  
 15 wall, floor, stairs, ceiling, column, statue, monument, structure, surface, artwork, or adornment in  
 16 the State Capitol Complex. It is unlawful for any person or persons to willfully block or otherwise  
 17 willfully obstruct any public access, stair, or elevator in the State Capitol Complex after being  
 18 asked by a law-enforcement officer acting in his or her official capacity to desist: *Provided*,  
 19 however, That, in order to preserve the constitutional right of the people to assemble, it is not  
 20 willful blocking or willful obstruction for persons gathered in a group or crowd if the persons move  
 21 to the side or part to allow other persons to pass by the group or crowd to gain ingress or egress:  
 22 *Provided further*, That this subsection does not apply to a law-enforcement officer acting in his or  
 23 her official capacity.

24 Any person who violates this subsection is guilty of a Class II misdemeanor.

**~~§61-6-14. Disturbance of schools, societies, and other assemblies; penalty. Threats of  
 terrorist acts, conveying false information concerning terrorist acts and committing  
 terrorist hoaxes prohibited; penalties.~~**

1 ~~If any person willfully interrupt, molest or disturb any free school, Sunday school, or other~~  
 2 ~~school, a school exhibition, or any literary society, or any other society or meeting formed or~~  
 3 ~~convened for intellectual, social or moral improvement, or for improvement in music, either vocal~~  
 4 ~~or instrumental, or for any moral or social amusement, or any other society organized or carried~~  
 5 ~~on under or in pursuance of the laws of this state, or any fourth of July celebration, Christmas~~  
 6 ~~tree, or church festival, or any other festival, or any society, lawfully carried on, he or she shall be~~  
 7 ~~guilty of a misdemeanor, and, upon conviction, shall be fined not less than \$10 nor more than~~  
 8 ~~\$50, and, at the discretion of the court, be confined in jail not more than thirty days in addition to~~  
 9 ~~such fine.~~

10 (a) As used in this section:

11 “Economic harm” means all direct, incidental and consequential pecuniary harm suffered  
12 by a victim as a result of criminal conduct. Economic harm includes, but is not limited to, the  
13 following:

14 (1) All wages, salaries or other compensation lost as a result of the criminal conduct;

15 (2) The cost of all wages, salaries or other compensation paid to employees for time those  
16 employees are prevented from working as a result of the criminal conduct;

17 (3) The cost of all wages, salaries or other compensation paid to employees for time those  
18 employees spent in reacting to the results of the criminal conduct; or

19 (4) The overhead costs incurred for the time that a business is shut down as a result of  
20 the criminal conduct.

21 “Hoax substance or device” means any substance or device that is shaped, sized, colored,  
22 marked, imprinted, numbered, labeled, packaged, distributed, priced or delivered so as to cause  
23 a reasonable person to believe that the substance or device is of a nature which is capable of  
24 causing serious bodily injury or damage to property or the environment.

25 “Terrorist act” means an act that is:

26 (1) Likely to result in serious bodily injury or damage to property or the environment; and

27 (2) Intended to:

28 (A) Intimidate or coerce the civilian population;

29 (B) Influence the policy of a branch or level of government by intimidation or coercion;

30 (C) Affect the conduct of a branch or level of government by intimidation or coercion; or

31 (D) Retaliate against a branch or level of government for a policy or conduct of the  
32 government.

33 (b) Any person who knowingly and willfully threatens to commit a terrorist act, with or  
34 without the intent to commit the act, is guilty of a Class VI felony.

35 (c) Any person who knowingly and willfully conveys false information knowing the

36 information to be false concerning an attempt or alleged attempt being made or to be made of a  
37 terrorist act is guilty of a Class VI felony.

38 (d) Any person who uses a hoax substance or device with the specific intent to commit a  
39 terrorist act is guilty of a Class V felony.

40 (e) The court shall order any person convicted of an offense under this section to pay the  
41 victim restitution in an amount not to exceed the total amount of any economic harm suffered.

42 (f) The court shall order any person convicted of an offense under this section to reimburse  
43 the state or any subdivision of the state for any expenses incurred by the state or the subdivision  
44 incident to its response to a violation of this section.

45 (g) The conviction of any person under the provisions of this section does not preclude or  
46 otherwise limit any civil proceedings arising from the same act.

**§61-6-14a. Loitering on school property; penalty; exceptions.**

1 [Repealed]

**§61-6-15. Prohibiting violations of an individual's civil rights; penalties.**

1 (a) All persons within the boundaries of the State of West Virginia have the right to be free  
2 from any violence, or intimidation by threat of violence, committed against their persons or  
3 property because of their race, color, religion, ancestry, national origin, political affiliation or sex.

4 (b) Any person who by force or threat of force, willfully injures, intimidates or interferes  
5 with, or attempts to injure, intimidate or interfere with, or oppresses or threatens any other person  
6 in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution  
7 or laws of the State of West Virginia or by the Constitution or laws of the United States, because  
8 of the other person's race, color, religion, ancestry, national origin, political affiliation or sex, is  
9 guilty of a Class VI felony.

10 (c) Any person who conspires with another person or persons to willfully injure, oppress,  
11 threaten, or intimidate or interfere with any citizen because of that other person's race, color,  
12 religion, ancestry, national origin, political affiliation or sex in the free exercise or enjoyment of

13 any right or privilege secured to him or her by the Constitution or laws of the State of West Virginia  
14 or by the Constitution or laws of the United States, and who in willful furtherance thereof  
15 assembles with one or more persons for the purpose of teaching any technique or means capable  
16 of causing property damage, bodily injury or death when such person or persons intend to employ  
17 such techniques or means to violate this section, each such person is guilty of a Class VI felony.

18 (d) The fact that a person committed a felony or misdemeanor, or attempted to commit a  
19 felony, because of the victim's race, color, religion, ancestry, national origin, political affiliation, or  
20 sex, shall be considered a circumstance in aggravation of any crime in imposing sentence.

21 (e) Nothing contained in this section makes unlawful the teaching of any technique in self-  
22 defense.

23 (f) Nothing in this section may be construed so as to make it unlawful nor to prohibit nor,  
24 in any manner, to impede or to interfere with any person in conducting labor union or labor union  
25 organizing activities.

**§61-6-16. Wearing masks, hoods, or face coverings.**

1 (a) Except as otherwise provided in this section, no person, whether in a motor vehicle or  
2 otherwise, may wear any mask, hood or device whereby any portion of the face is so covered,  
3 with the intent of concealing their identity while engaged in the commission of any illegal act.

4 (b) The provisions of this section, additionally and specifically, do not apply to any person,  
5 not committing an illegal act, who is:

6 (1) Under sixteen years of age;

7 (2) Wearing a traditional holiday costume;

8 (3) Engaged in a trade or employment where a mask, hood or device is worn for the  
9 purpose of ensuring the physical safety of the wearer;

10 (4) Using a mask, hood or device in theatrical productions, including use in mardi gras  
11 celebrations or similar masquerade balls;

12 (5) Wearing a mask, hood or device prescribed for civil defense drills, exercises, or

13 emergencies; or

14 (6) Wearing a mask, hood, or device for the sole purpose of protection from the elements  
15 or while participating in a winter sport.

16 (c) Any person who violates any provision of this section is guilty of a Class III  
17 misdemeanor, and, upon conviction thereof, shall be fined not more than \$500 or confined in jail  
18 not more than one year, or both fined and confined.

**§61-6-17. False reports concerning bombs or other explosive devices; penalties. Falsely reporting child abuse.**

1 ~~(a) Any person who imparts or conveys or causes to be imparted or conveyed any false~~  
2 ~~information, knowing or having reasonable cause to believe the information to be false,~~  
3 ~~concerning the presence of any bomb or other explosive device in, at, on, near, under or against~~  
4 ~~any dwelling house, structure, improvement, building, bridge, motor vehicle, vessel, boat, railroad~~  
5 ~~car, airplane or other place or concerning an attempt or alleged attempt being made or to be made~~  
6 ~~to so place or explode any bomb or other explosive device is guilty of a felony and, upon conviction~~  
7 ~~thereof, shall be fined not less than \$100 nor more than \$2,000 or confined in a state correctional~~  
8 ~~facility for not less than one year nor more than three years, or both.~~

9 ~~(b) If any person violates any provision of this section and the violation directly causes~~  
10 ~~economic harm as defined in subsection (d) of this section, in addition to any other penalty, the~~  
11 ~~circuit court may order the offender to pay the victim or victims restitution, in accordance with the~~  
12 ~~provisions of article eleven-a of this chapter, for economic loss caused by the violation in an~~  
13 ~~amount not to exceed the economic harm suffered. Nothing in this section may be construed to~~  
14 ~~limit the circuit court's authority to order restitution pursuant to other provisions of this code.~~

15 ~~(c) Notwithstanding any provision of this section to the contrary, any person violating the~~  
16 ~~provisions of subsection (a) of this section whose violation of the subsection results in another~~  
17 ~~suffering serious bodily injury is guilty of a felony and, upon conviction thereof, shall be confined~~  
18 ~~in a state correctional facility for not less than one year nor more than five years or fined not more~~

19 ~~than \$10,000, or both. Each injury resulting from a violation of subsection (a) of this section~~  
 20 ~~constitutes a separate offense.~~

21 ~~(d) As used in this section, "economic harm" means all direct, incidental and consequential~~  
 22 ~~pecuniary harm suffered by a victim as a result of criminal conduct. Economic harm includes, but~~  
 23 ~~is not limited to, the following:~~

24 ~~(1) All wages, salaries or other compensation lost as a result of the criminal conduct;~~

25 ~~(2) The cost of all wages, salaries or other compensation paid to employees for time those~~  
 26 ~~employees are prevented from working as a result of the criminal conduct;~~

27 ~~(3) The cost of all wages, salaries or other compensation paid to employees for time those~~  
 28 ~~employees spent in reacting to the results of the criminal conduct; or~~

29 ~~(4) The overhead costs incurred for the time that a business is shut down as a result of~~  
 30 ~~the criminal conduct.~~

31 (a) Any person who knowingly and intentionally reports or causes to be reported to a law-  
 32 enforcement officer, child protective service worker, or judicial officer that another has committed  
 33 child sexual abuse, child abuse, or neglect as those terms are defined in §49-1-201 of this code  
 34 who when doing so knows or has reason to know the accusation is false, is guilty of a Class VI  
 35 felony, and, upon conviction, shall be fined not more than \$1,000, sentenced to not more than  
 36 sixty hours of court-approved community service, or both fined and ordered to community service.

37 (b) In addition to any other sanctions imposed by the provisions of this section, any person  
 38 convicted of a violation of this section, and who does it with the intent to influence a child custody  
 39 decision, shall be required to attend and complete a court-approved parenting class.

**§61-6-18. Camping upon governmental grounds or lawns; penalties; public nuisance.**

1 [Repealed]

**§61-6-19. Willful disruption of governmental processes; offenses occurring at State Capitol  
 Complex; penalties.**

1 [Repealed]

**§61-6-20. Falsely reporting an emergency incident.**

1 [Repealed]

**§61-6-21. Prohibiting violations of an individual’s civil rights; penalties.**

1 [Repealed]

**§61-6-22. Wearing masks, hoods, or face coverings.**

1 [Repealed]

**§61-6-23. Shooting range; limitations on nuisance actions; noise ordinances.**

1 [Repealed]

**§61-6-24. Threats of terrorist acts, conveying false information concerning terrorist acts and committing terrorist hoaxes prohibited; penalties.**

1 [Repealed]

**§61-6-25. Falsely reporting child abuse.**

1 [Repealed]

**ARTICLE 7. DANGEROUS WEAPONS.**

**§61-7-3 Carrying a deadly weapon without provisional license or other authorization by persons under twenty-one years of age; penalties.**

1 (a) Any person under twenty-one years of age and not otherwise prohibited from  
2 possessing firearms under §61-7-7 of this code who carries a concealed deadly weapon, without  
3 a state license or other lawful authorization established under the provisions of this code, is guilty  
4 of a Class 2 misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor  
5 more than \$1,000 and may be imprisoned in jail for not more than twelve months for the first  
6 offense; but upon conviction of a second or subsequent offense, he or she is guilty of a felony  
7 and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than  
8 one nor more than five years and fined not less than \$1,000 nor more than \$5,000.

9 (b) ~~The prosecuting attorney in all cases shall ascertain whether or not the charge made~~  
10 ~~by the grand jury is a first offense or is a second or subsequent offense and, if it is a second or~~

11 ~~subsequent offense, it shall be so stated in the indictment returned, and the prosecuting attorney~~  
12 ~~shall introduce the record evidence before the trial court of such second or subsequent offense~~  
13 ~~and may not be permitted to use discretion in introducing evidence to prove the same on the trial.~~

**§61-7-4. License to carry deadly weapons; how obtained.**

1 (a) Except as provided in §61-7-4(h) of this code, any person desiring to obtain a state  
2 license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for the  
3 license, and pay to the sheriff, at the time of application, a fee of \$25. Concealed weapons license  
4 may only be issued for pistols and revolvers. Each applicant shall file with the sheriff a complete  
5 application, as prepared by the Superintendent of the West Virginia State Police, in writing, duly  
6 verified, which sets forth only the following licensing requirements:

7 (1) The applicant's full name, date of birth, Social Security number, a description of the  
8 applicant's physical features, the applicant's place of birth, the applicant's country of citizenship  
9 and, if the applicant is not a United States citizen, any alien or admission number issued by the  
10 United States Bureau of Immigration and Customs Enforcement, and any basis, if applicable, for  
11 an exception to the prohibitions of 18 U.S.C. §922(g)(5)(B);

12 (2) That, on the date the application is made, the applicant is a bona fide United States  
13 citizen or legal resident thereof and resident of this state and of the county in which the application  
14 is made and has a valid driver's license or other state-issued photo identification showing the  
15 residence;

16 (3) That the applicant is twenty-one years of age or older;

17 (4) That the applicant is not addicted to alcohol, a controlled substance or a drug and is  
18 not an unlawful user thereof as evidenced by either of the following within the three years  
19 immediately prior to the application:

20 (A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug  
21 treatment; or

22 (B) Two or more convictions for driving while under the influence or driving while impaired;

23 (5) That the applicant has not been convicted of a felony unless the conviction has been  
24 expunged or set aside or the applicant's civil rights have been restored or the applicant has been  
25 unconditionally pardoned for the offense;

26 (6) That the applicant has not been convicted of a misdemeanor crime of violence other  
27 than an offense set forth in subdivision (7) of this subsection in the five years immediately  
28 preceding the application;

29 (7) That the applicant has not been convicted of a misdemeanor crime of domestic  
30 violence as defined in 18 U.S.C. §921(a)(33), or a misdemeanor offense of assault or battery  
31 either under §61-2-28 of this code or §61-2-9(b) or §61-2-9(c) of this code, in which the victim  
32 was a current or former spouse, current or former sexual or intimate partner, person with whom  
33 the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a  
34 member of the defendant's household at the time of the offense, or a misdemeanor offense with  
35 similar essential elements in a jurisdiction other than this state;

36 (8) That the applicant is not under indictment for a felony offense or is not currently serving  
37 a sentence of confinement, parole, probation, or other court-ordered supervision imposed by a  
38 court of any jurisdiction or is the subject of an emergency or temporary domestic violence  
39 protective order or is the subject of a final domestic violence protective order entered by a court  
40 of any jurisdiction;

41 (9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily  
42 committed to a mental institution. If the applicant has been adjudicated mentally incompetent or  
43 involuntarily committed, the applicant must provide a court order reflecting that the applicant is no  
44 longer under such disability and the applicant's right to possess or receive a firearm has been  
45 restored;

46 (10) That the applicant is not prohibited under the provisions of §61-7-7 of this code or  
47 federal law, including 18 U.S.C. §922(g) or (n), from receiving, possessing, or transporting a  
48 firearm;

49 (11) That the applicant has qualified under the minimum requirements set forth in  
50 subsection (d) of this section for handling and firing the weapon: *Provided*, That this requirement  
51 shall be waived in the case of a renewal applicant who has previously qualified; and

52 (12) That the applicant authorizes the sheriff of the county, or his or her designee, to  
53 conduct an investigation relative to the information contained in the application.

54 (b) For both initial and renewal applications, the sheriff shall conduct an investigation  
55 including a nationwide criminal background check consisting of inquiries of the National Instant  
56 Criminal Background Check System, the West Virginia criminal history record responses and the  
57 National Interstate Identification Index and shall review the information received in order to verify  
58 that the information required in subsection (a) of this section is true and correct. A license may  
59 not be issued unless the issuing sheriff has verified through the National Instant Criminal  
60 Background Check System that the information available to him or her does not indicate that  
61 receipt or possession of a firearm by the applicant would be in violation of the provisions of §61-  
62 7-7 of this code or federal law, including 18 U.S.C. §922(g) or (n).

63 (c) Twenty-five dollars of the application fee and any fees for replacement of lost or stolen  
64 licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license  
65 administration fund. The fund shall be administered by the sheriff and shall take the form of an  
66 interest-bearing account with any interest earned to be compounded to the fund. Any funds  
67 deposited in this concealed weapon license administration fund are to be expended by the sheriff  
68 to pay the costs associated with issuing concealed weapons licenses. Any surplus in the fund on  
69 hand at the end of each fiscal year may be expended for other law-enforcement purposes or  
70 operating needs of the sheriff's office, as the sheriff considers appropriate.

71 (d) All persons applying for a license must complete a training course in handling and firing  
72 a handgun, which includes the actual live firing of ammunition by the applicant. The successful  
73 completion of any of the following courses fulfills this training requirement: *Provided*, That the  
74 completed course includes the actual live firing of ammunition by the applicant:

75 (1) Any official National Rifle Association handgun safety or training course;

76 (2) Any handgun safety or training course or class available to the general public offered  
77 by an official law-enforcement organization, community college, junior college, college or private  
78 or public institution or organization or handgun training school utilizing instructors certified by the  
79 institution;

80 (3) Any handgun training or safety course or class conducted by a handgun instructor  
81 certified as such by the state or by the National Rifle Association;

82 (4) Any handgun training or safety course or class conducted by any branch of the United  
83 States military, reserve or National Guard or proof of other handgun qualification received while  
84 serving in any branch of the United States military, reserve, or National Guard.

85 A photocopy of a certificate of completion of any of the courses or classes or an affidavit  
86 from the instructor, school, club, organization or group that conducted or taught the course or  
87 class attesting to the successful completion of the course or class by the applicant or a copy of  
88 any document which shows successful completion of the course or class is evidence of  
89 qualification under this section and shall include the instructor's name, signature and NRA or state  
90 instructor identification number, if applicable.

91 (e) All concealed weapons license applications must be notarized by a notary public duly  
92 licensed under §39-4-1 *et seq.* of this code. Falsification of any portion of the application  
93 constitutes false swearing and is punishable under §61-5-2 of this code.

94 (f) The sheriff shall issue a license unless he or she determines that the application is  
95 incomplete, that it contains statements that are materially false or incorrect or that applicant  
96 otherwise does not meet the requirements set forth in this section. The sheriff shall issue, reissue,  
97 or deny the license within 45 days after the application is filed if all required background checks  
98 authorized by this section are completed.

99 (g) Before any approved license is issued or is effective, the applicant shall pay to the  
100 sheriff a fee in the amount of \$25 which the sheriff shall forward to the Superintendent of the West

101 Virginia State Police within 30 days of receipt. A license in effect as of the effective date of the  
102 amendments to this section enacted during the 2019 regular session of the Legislature shall,  
103 subject to revocation for cause, be valid until the licensee's birthday during the fifth year from the  
104 date of issuance or five years from the date of issuance, whichever is later in time. Renewals of  
105 such licenses and licenses newly issued after the effective date of the amendments to this section  
106 enacted during the 2019 regular session of the Legislature shall, subject to revocation for cause,  
107 be valid for a period of five years from the licensees' most recent birthday.

108 (h) Each license shall contain the full name and address of the licensee and a space upon  
109 which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign  
110 and attach his or her seal to all license cards. The sheriff shall provide to each new licensee a  
111 duplicate license card, in size similar to other state identification cards and licenses, suitable for  
112 carrying in a wallet, and the license card is considered a license for the purposes of this section.  
113 All duplicate license cards issued on or after July 1, 2017, shall be uniform across all 55 counties  
114 in size, appearance and information and shall feature a photograph of the licensee.

115 (i) The Superintendent of the West Virginia State Police, in cooperation with the West  
116 Virginia Sheriffs' Bureau of Professional Standards, shall prepare uniform applications for licenses  
117 and license cards showing that the license has been granted and shall do any other act required  
118 to be done to protect the state and see to the enforcement of this section.

119 (j) If an application is denied, the specific reasons for the denial shall be stated by the  
120 sheriff denying the application. Any person denied a license may file, in the circuit court of the  
121 county in which the application was made, a petition seeking review of the denial. The petition  
122 shall be filed within 30 days of the denial. The court shall then determine whether the applicant is  
123 entitled to the issuance of a license under the criteria set forth in this section. The applicant may  
124 be represented by counsel, but in no case is the court required to appoint counsel for an applicant.  
125 The final order of the court shall include the court's findings of fact and conclusions of law. If the  
126 final order upholds the denial, the applicant may file an appeal in accordance with the Rules of

127 Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and conclusions of  
128 law of the court fail to uphold the denial, the applicant may be entitled to reasonable costs and  
129 attorney's fees, payable by the sheriff's office which issued the denial.

130 (k) If a license is lost or destroyed, the person to whom the license was issued may obtain  
131 a duplicate or substitute license for a fee of \$5 by filing a notarized statement with the sheriff  
132 indicating that the license has been lost or destroyed.

133 (l) Whenever any person after applying for and receiving a concealed weapon license  
134 moves from the address named in the application to another county within the state, the license  
135 remains valid for the remainder of the five years unless the sheriff of the new county has  
136 determined that the person is no longer eligible for a concealed weapon license under this article,  
137 and the sheriff shall issue a new license bearing the person's new address and the original  
138 expiration date for a fee not to exceed \$5: *Provided*, That the licensee, within 20 days thereafter,  
139 notifies the sheriff in the new county of residence in writing of the old and new addresses.

140 (m) The sheriff shall, immediately after the license is granted as aforesaid, furnish the  
141 Superintendent of the West Virginia State Police a certified copy of the approved application. The  
142 sheriff shall furnish to the Superintendent of the West Virginia State Police at any time so  
143 requested a certified list of all licenses issued in the county. The Superintendent of the West  
144 Virginia State Police shall maintain a registry of all persons who have been issued concealed  
145 weapons licenses.

146 (n) The sheriff shall deny any application or revoke any existing license upon  
147 determination that any of the licensing application requirements established in this section have  
148 been violated by the licensee.

149 (o) A person who is engaged in the receipt, review or in the issuance or revocation of a  
150 concealed weapon license does not incur any civil liability as the result of the lawful performance  
151 of his or her duties under this article.

152 (p) Notwithstanding subsection (a) of this section, with respect to application by an

153 honorably discharged veteran of the armed forces of the United States or a former law-  
154 enforcement officer honorably retired from agencies governed by §7-14-1 *et seq.* of this code; §8-  
155 14-1 *et seq.* of this code; §15-2-1 *et seq.* of this code; and §20-7-1 *et seq.* of this code, an  
156 honorably retired officer or an honorably discharged veteran of the armed forces of the United  
157 States is exempt from payment of fees and costs as otherwise required by this section. All other  
158 application and background check requirements set forth in this section are applicable to these  
159 applicants.

160 (q) Information collected under this section, including applications, supporting documents,  
161 permits, renewals or any other information that would identify an applicant for or holder of a  
162 concealed weapon license, is confidential: *Provided*, That this information may be disclosed to a  
163 law-enforcement agency or officer: (i) To determine the validity of a license; (ii) to assist in a  
164 criminal investigation or prosecution; or (iii) for other lawful law-enforcement purposes. ~~A person~~  
165 ~~who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be~~  
166 ~~fined not less than \$50 or more than \$200 for each offense. Any person who violates this~~  
167 ~~subsection is guilty of a petty offense.~~

168 (r) A person who pays fees for training or application pursuant to this article after the  
169 effective date of this section is entitled to a tax credit equal to the amount actually paid for training  
170 not to exceed \$50: *Provided*, That if such training was provided for free or for less than \$50, then  
171 such tax credit may be applied to the fees associated with the initial application.

172 (s) Except as restricted or prohibited by the provisions of this article or as otherwise  
173 prohibited by law, the issuance of a concealed weapon license issued in accordance with the  
174 provisions of this section authorizes the holder of the license to carry a concealed pistol or revolver  
175 on the lands or waters of this state.

**§61-7-4a. Provisional license to carry deadly weapons; how obtained.**

1 (a) Any person who is at least eighteen years of age and less than twenty-one years of  
2 age who desires to obtain a state license to carry a concealed deadly weapon shall apply to the

3 sheriff of his or her county for a provisional license, and pay to the sheriff, at the time of application,  
4 a fee of \$15. Provisional licenses may only be issued for pistols or revolvers. Each applicant shall  
5 file with the sheriff a complete application, as prepared by the Superintendent of the West Virginia  
6 State Police, in writing, duly verified, which sets forth only the following licensing requirements:

7 (1) The applicant's full name, date of birth, Social Security number, a description of the  
8 applicant's physical features, the applicant's place of birth, the applicant's country of citizenship  
9 and, if the applicant is not a United States citizen, any alien or admission number issued by the  
10 United States Bureau of Immigration and Customs Enforcement, and any basis, if applicable, for  
11 an exception to the prohibitions of 18 U. S. C. §922(g)(5)(B);

12 (2) That, on the date the application is made, the applicant is a bona fide resident of this  
13 state and of the county in which the application is made and has a valid driver's license or other  
14 state-issued photo identification showing the residence;

15 (3) That the applicant is at least eighteen years of age and less than twenty-one years of  
16 age;

17 (4) That the applicant is not addicted to alcohol, a controlled substance or a drug and is  
18 not an unlawful user thereof as evidenced by either of the following within the three years  
19 immediately prior to the application:

20 (A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug  
21 treatment; or

22 (B) Two or more convictions for driving while under the influence or driving while impaired;

23 (5) That the applicant has not been convicted of a felony unless the conviction has been  
24 expunged or set aside, or the applicant's civil rights have been restored or the applicant has been  
25 unconditionally pardoned for the offense;

26 (6) That the applicant has not been convicted of a misdemeanor crime of violence other  
27 than an offense set forth in subdivision (7) of this section within five years immediately preceding  
28 the application;

29           (7) That the applicant has not been convicted of a misdemeanor crime of domestic  
30 violence as defined in 18 U. S. C. §921(a)(33), or a misdemeanor offense of assault or battery  
31 under either section twenty-eight, article two of this chapter or subsection (b) or (c), section nine,  
32 article two of this chapter in which the victim was a current or former spouse, current or former  
33 sexual or intimate partner, person with whom the defendant cohabits or has cohabited, a parent  
34 or guardian, the defendant's child or ward or a member of the defendant's household at the time  
35 of the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other  
36 than this state;

37           (8) That the applicant is not under indictment for a felony offense or is not currently serving  
38 a sentence of confinement, parole, probation or other court-ordered supervision imposed by a  
39 court of any jurisdiction, or is the subject of an emergency or temporary domestic violence  
40 protective order or is the subject of a final domestic violence protective order entered by a court  
41 of any jurisdiction;

42           (9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily  
43 committed to a mental institution. If the applicant has been adjudicated mentally incompetent or  
44 involuntarily committed, the applicant must provide a court order reflecting that the applicant is no  
45 longer under such disability and the applicant's right to possess or receive a firearm has been  
46 restored;

47           (10) That the applicant is not prohibited under section seven of this article or federal law,  
48 including 18 U. S. C. §922(g) or (n), from receiving, possessing, or transporting a firearm;

49           (11) That the applicant has qualified under the minimum requirements set forth in  
50 subsection (d) of this section for handling and firing the weapon;

51           (12) That the applicant authorizes the sheriff of the county, or his or her designee, to  
52 conduct an investigation relative to the information contained in the application.

53           (b) For provisional license applications, the sheriff shall conduct an investigation including  
54 a nationwide criminal background check consisting of inquiries of the National Instant Criminal

55 Background Check System, the West Virginia criminal history record responses and the National  
56 Interstate Identification Index and shall review the information received in order to verify that the  
57 information required in subsection (a) of this section is true and correct. A provisional license may  
58 not be issued unless the issuing sheriff has verified through the National Instant Criminal  
59 Background Check System that the information available does not indicate that receipt of or  
60 possession of a firearm by the applicant would be in violation of the provisions of section seven  
61 of this article or federal law, including 18 U. S. C. §922(g) or (n).

62 (c) Fifteen dollars of the application fee and any fees for replacement of lost or stolen  
63 provisional licenses received by the sheriff shall be deposited by the sheriff into a concealed  
64 weapons license administration fund. The fund shall be administered by the sheriff and shall take  
65 the form of an interest-bearing account with any interest earned to be compounded to the fund.  
66 Any funds deposited in said fund are to be expended by the sheriff to pay the costs associated  
67 with issuing concealed weapons provisional licenses. Any surplus in the fund on hand at the end  
68 of each fiscal year may be expended for other law-enforcement purposes or operating needs of  
69 the sheriff's office, as the sheriff considers appropriate.

70 (d) All persons applying for a provisional license must complete a training course in  
71 handling and firing a handgun, which includes the actual live firing of ammunition by the applicant.  
72 The successful completion of any of the following courses fulfills this training requirement:  
73 *Provided*, That the completed course included the actual live firing of ammunition by the applicant:

74 (1) Any official National Rifle Association handgun safety or training course;

75 (2) Any handgun safety or training course or class available to the general public offered  
76 by an official law-enforcement organization, community college, junior college, college, or private  
77 or public institution, or organization or handgun training school utilizing instructors certified by the  
78 institution;

79 (3) Any handgun training or safety course or class conducted by a handgun instructor  
80 certified as such by the state or by the National Rifle Association;

81 (4) Any proof of current or former service in the United States armed forces, armed forces  
82 reserves or National Guard.

83 A photocopy of a certificate of completion of any of the courses or classes or an affidavit  
84 from the instructor, school, club, organization, or group that conducted or taught the course or  
85 class attesting to the successful completion of the course or class by the applicant, or a copy of  
86 any document which shows successful completion of the course or class, is evidence of  
87 qualification under this section. Certificates, affidavits, or other documents submitted to show  
88 completion of a course or class shall include instructor information and proof of instructor  
89 certification, including, if applicable, the instructor's NRA instructor certification number.

90 (e) All provisional license applications must be notarized by a notary public duly licensed  
91 under article four, chapter twenty-nine of this code. Falsification of any portion of the application  
92 constitutes false swearing and is punishable under section two, article five of this chapter.

93 (f) The sheriff shall issue a provisional license unless the sheriff determines that the  
94 application is incomplete, that it contains statements that are materially false or incorrect or that  
95 applicant otherwise does not meet the requirements set forth in this section. The sheriff shall  
96 issue, reissue, or deny the license within forty-five days after the application is filed once all  
97 required background checks authorized by this section are completed.

98 (g) Before any approved license is issued or is effective, the applicant shall pay to the  
99 sheriff a fee in the amount of \$15 which the sheriff shall forward to the Superintendent of the West  
100 Virginia State Police within thirty days of receipt. The provisional license is valid until the licensee  
101 turns twenty-one years of age, unless sooner revoked.

102 (h) Each provisional license shall contain the full name and address of the licensee and a  
103 space upon which the signature of the licensee shall be signed with pen and ink. The issuing  
104 sheriff shall sign and attach his or her seal to all provisional license cards. The sheriff shall provide  
105 to each new licensee a duplicate license card, in size similar to other state identification cards  
106 and licenses, suitable for carrying in a wallet, and the license card is considered a license for the

107 purposes of this section. Duplicate license cards issued shall be uniform across all fifty-five  
108 counties in size, appearance and information and must feature a photograph of the licensee. The  
109 provisional license shall be readily distinguishable from a license issued pursuant to section four  
110 of this article and shall state: "NOT NICS EXEMPT. This license confers the same rights and  
111 privileges to carry a concealed pistol or revolver on the lands or waters of this state as a license  
112 issued pursuant to section four, article seven, chapter sixty-one of this code, except that this  
113 license does not satisfy the requirements of 18 U. S. C. §922(t)(3). A NICS check must be  
114 performed prior to purchase of a firearm from a federally licensed firearm dealer."

115 (i) The Superintendent of the West Virginia State Police, in coordination with the West  
116 Virginia Sheriffs' Bureau of Professional Standards, shall prepare uniform applications for  
117 provisional licenses and license cards showing that the license has been granted and shall  
118 perform any other act required to protect the state and to enforce this section.

119 (j) If an application is denied, the specific reasons for the denial shall be stated by the  
120 sheriff denying the application. Any person denied a provisional license may file, in the circuit  
121 court of the county in which the application was made, a petition seeking review of the denial. The  
122 petition shall be filed within thirty days of the denial. The court shall then determine whether the  
123 applicant is entitled to the issuance of a provisional license under the criteria set forth in this  
124 section. The applicant may be represented by counsel, but in no case is the court required to  
125 appoint counsel for an applicant. The final order of the court shall include the court's findings of  
126 fact and conclusions of law. If the final order upholds the denial, the applicant may file an appeal  
127 in accordance with the Rules of Appellate Procedure of the Supreme Court of Appeals. If the  
128 findings of fact and conclusions of law of the court fail to uphold the denial, the applicant may be  
129 entitled to reasonable costs and attorney's fees, payable by the sheriff's office which issued the  
130 denial.

131 (k) If a provisional license is lost or destroyed, the person to whom the license was issued  
132 may obtain a duplicate or substitute license for a fee of \$5 by filing a notarized statement with the

133 sheriff indicating that the license has been lost or destroyed.

134 (l) Whenever any person after applying for and receiving a provisional concealed weapon  
135 license moves from the address named in the application to another county within the state, the  
136 license remains valid until the licensee turns twenty-one years of age unless the sheriff of the new  
137 county has determined that the person is no longer eligible for a provisional concealed weapon  
138 license under this article, and the sheriff shall issue a new provisional license bearing the person's  
139 new address and the original expiration date for a fee not to exceed \$5: *Provided*, That the  
140 licensee within twenty days thereafter notifies the sheriff in the new county of residence in writing  
141 of the old and new addresses.

142 (m) The sheriff shall, immediately after the provisional license is granted, furnish the  
143 Superintendent of the West Virginia State Police a certified copy of the approved application. The  
144 sheriff shall furnish to the Superintendent of the West Virginia State Police, at any time so  
145 requested, a certified list of all provisional licenses issued in the county. The Superintendent of  
146 the West Virginia State Police shall maintain a registry of all persons who have been issued  
147 provisional concealed weapon licenses.

148 (n) The sheriff shall deny any application or revoke any existing provisional license upon  
149 determination that any of the licensing application requirements established in this section have  
150 been violated by the licensee.

151 (o) A person who is engaged in the receipt, review or in the issuance or revocation of a  
152 concealed weapon provisional license does not incur any civil liability as the result of the lawful  
153 performance of his or her duties under this article.

154 (p) Information collected under this section, including applications, supporting documents,  
155 permits, renewals, or any other information that would identify an applicant for or holder of a  
156 concealed weapon provisional license, is confidential: *Provided*, That this information may be  
157 disclosed to a law enforcement agency or officer: (i) To determine the validity of a provisional  
158 license; (ii) to assist in a criminal investigation or prosecution; or (iii) for other lawful law-

159 enforcement purposes. A person who violates this subsection is guilty of a petty offense.  
160 ~~misdemeanor and, upon conviction thereof, shall be fined not less than \$50 or more than \$200~~  
161 ~~for each offense.~~

162 (q) Except as restricted or prohibited by the provisions of this article or as otherwise  
163 prohibited by law, the issuance of a provisional concealed weapon license issued in accordance  
164 with the provisions of this section authorizes the holder of the license to carry a concealed pistol  
165 or revolver on the lands or waters of this state.

**§61-7-7. Persons prohibited from possessing firearms; classifications; right of  
nonprohibited persons over twenty-one years of age to carry concealed deadly  
weapons; offenses and penalties; reinstatement of rights to possess; offenses;  
penalties.**

1 (a) Except as provided in this section, no person shall may possess a firearm, as such is  
2 defined in section two of this article, who:

3 (1) Has been convicted in any court of a crime punishable by imprisonment for a term  
4 exceeding one year;

5 (2) Is habitually addicted to alcohol;

6 (3) Is an unlawful user of or habitually addicted to any controlled substance;

7 (4) Has been adjudicated to be mentally incompetent or who has been involuntarily  
8 committed to a mental institution pursuant to the provisions of Chapter 27 of this code or in similar  
9 law of another jurisdiction: *Provided*, That once an individual has been adjudicated as a mental  
10 defective or involuntarily committed to a mental institution, he or she shall be duly notified that  
11 they are to immediately surrender any firearms in their ownership or possession: *Provided*,  
12 *however*, That the mental hygiene commissioner or circuit judge shall first make a determination  
13 of the appropriate public or private individual or entity to act as conservator for the surrendered  
14 property;

15 (5) Is an alien illegally or unlawfully in the United States;

16 (6) Has been discharged from the armed forces under dishonorable conditions;

17 (7) Is subject to a domestic violence protective order that:

18 (A) Was issued after a hearing of which such person received actual notice and at which  
19 such person had an opportunity to participate;

20 (B) Restrains such person from harassing, stalking, or threatening an intimate partner of  
21 such person or child of such intimate partner or person, or engaging in other conduct that would  
22 place an intimate partner in reasonable fear of bodily injury to the partner or child; and

23 (C)(i) Includes a finding that such person represents a credible threat to the physical safety  
24 of such intimate partner or child; or

25 (ii) By its terms explicitly prohibits the use, attempted use, or threatened use of physical  
26 force against such intimate partner or child that would reasonably be expected to cause bodily  
27 injury; or

28 (8) Has been convicted of a misdemeanor offense of assault or battery either under the  
29 provisions of §61-2-28 of this code or the provisions of §61-2-29(b) or §61-2-29(c) of this code of  
30 this code or a federal or state statute with the same essential elements in which the victim was a  
31 current or former spouse, current or former sexual or intimate partner, person with whom the  
32 defendant has a child in common, person with whom the defendant cohabits or has cohabited, a  
33 parent or guardian, the defendant's child or ward or a member of the defendant's household at  
34 the time of the offense or has been convicted in any court of any jurisdiction of a comparable  
35 misdemeanor crime of domestic violence.

36 ~~Any person who violates the provisions of this subsection shall be guilty of a misdemeanor~~  
37 ~~and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined~~  
38 ~~in the county jail for not less than ninety days nor more than one year, or both. Any person who~~  
39 ~~violates the provisions of this subsection shall be guilty of a Class 1 misdemeanor.~~

40 (b) Notwithstanding the provisions of subsection (a) of this section, any person:

41 (1) Who has been convicted in this state or any other jurisdiction of a felony crime of

42 violence against the person of another or of a felony sexual offense; or

43 (2) Who has been convicted in this state or any other jurisdiction of a felony controlled  
44 substance offense involving a Schedule I controlled substance other than marijuana, a Schedule  
45 II or a Schedule III controlled substance as such are defined in §§60A-2-204, 205 and 206 of this  
46 code and who possesses a firearm as such is defined §61-7-2 in section two of this code ~~shall be~~  
47 is guilty of a Class 6 felony ~~and, upon conviction thereof, shall be confined in a state correctional~~  
48 ~~facility for not more than five years or fined not more than \$5,000, or both. The provisions of~~  
49 ~~subsection (f) of this section shall not apply to persons convicted of offenses referred to in this~~  
50 ~~subsection or to persons convicted of a violation of this subsection.~~

51 (3) The provisions of subsection (f) of this section may not apply to persons convicted of  
52 offenses referred to in this subsection or to persons convicted of a violation of this subsection.

53 (c) Any person may carry a concealed deadly weapon without a license therefor who is:

54 (1) At least 21-one years of age;

55 (2) A United States citizen or legal resident thereof;

56 (3) Not prohibited from possessing a firearm under the provisions of this section; and

57 (4) Not prohibited from possessing a firearm under the provisions of 18 U. S. C. §922(g)

58 or (n).

59 (d) As a separate and additional offense to the offense provided for in subsection (a) of  
60 this section, and in addition to any other offenses outlined in this code, and except as provided  
61 by subsection (e) of this section, any person prohibited by subsection (a) of this section from  
62 possessing a firearm who carries a concealed firearm is guilty of a Class 6 felony ~~and, upon~~  
63 ~~conviction thereof, shall be confined in a state correctional facility for not more than three years~~  
64 ~~or fined not more than \$5,000, or both.~~

65 (e) As a separate and additional offense to the offense described in subsection (b) of this  
66 section, and in addition to any other offenses outlined in this code, any person prohibited by  
67 subsection (b) of this section from possessing a firearm who carries a concealed firearm is guilty

68 of a Class 5 felony, and, upon conviction thereof, shall be confined in a state correctional facility  
69 for not more than ten years or fined not more than \$10,000, or both.

70 (f) Any person prohibited from possessing a firearm by the provisions of subsection (a) of  
71 this section may petition the circuit court of the county in which he or she resides to regain the  
72 ability to possess a firearm, and if the court finds by clear and convincing evidence that the person  
73 petitioner is competent and capable of exercising the responsibility concomitant with the  
74 possession of a firearm, the court may enter an order allowing the petitioner person to possess a  
75 firearm if such possession would not violate any federal law: *Provided*, That a person prohibited  
76 from possessing a firearm by the provisions of subdivision (4), subsection (a) of this section may  
77 petition to regain the ability to possess a firearm in accordance with the provisions of §61-7A-5 of  
78 this code.

79 (5) The provisions of subsection (f) of this section do not apply to persons convicted of an  
80 offense identified in this section.

81 (g) Any person who has been convicted of an offense which disqualifies him or her from  
82 possessing a firearm by virtue of a criminal conviction whose conviction was expunged or set  
83 aside or who subsequent thereto receives an unconditional pardon for said offense shall not be  
84 prohibited from possessing a firearm by the provisions of the section.

**§61-7-9. Possession of machine guns, penalties.**

1 [Repealed]

**§61-7-10. Deadly weapons for sale or hire; sale to prohibited persons; penalties.**

1 ~~(a) Any person who violates the provisions of subsection (b) of this section is guilty of a~~  
2 ~~misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or confined in jail~~  
3 ~~for not more than one year, or both fined and confined, except that where the person violating~~  
4 ~~subsection (b) is other than a natural person, the person shall be fined not more than \$10,000.~~

5 ~~(b) (a)~~ A person may not knowingly sell, rent, give or lend, or, where the person is other  
6 than a natural person, knowingly permit an employee thereof to knowingly sell, rent, give or lend,

7 any deadly weapon other than a firearm to a person prohibited from possessing a deadly weapon  
8 other than a firearm by any provision of this article. Any natural person who violates the provisions  
9 of this section is guilty of a Class 1 misdemeanor.

10 ~~(e) (b)~~ A person may not knowingly sell, rent, give, or lend, or where the person is other  
11 than a natural person, knowingly permit an employee thereof to knowingly sell, rent, give or lend  
12 a firearm or ammunition to a person prohibited by any provision of this article or the provisions of  
13 18 U.S.C. §922. ~~(d)~~ Any person who violates any of the provisions of this subsection ~~(e)~~ of this  
14 section is guilty of a Class 5 felony, and, upon conviction thereof, shall be fined not more than  
15 \$100,000, imprisoned in a state correctional facility for a definite term of years of not less than  
16 three years nor more than 10 years, or both fined and imprisoned, except that where the person  
17 committing an offense punishable under this subsection is other than a natural person, the person  
18 shall be fined not more than \$250,000.

19 ~~(e) (c)~~ Any person who knowingly solicits, persuades, encourages or entices A person  
20 may not knowingly solicit, persuade, encourage or entice a licensed dealer or private seller of  
21 firearms or ammunition to transfer a firearm or ammunition under circumstances which the person  
22 knows would violate the laws of this state or the United States ~~is guilty of a felony~~. Any person  
23 who willfully procures another to engage in conduct prohibited by this subsection shall be  
24 punished as a principal. This subsection does not apply to a law-enforcement officer acting in his  
25 or her official capacity. Any person who violates the provisions of this subsection is guilty of a  
26 Class 6 felony and, upon conviction thereof, shall be fined not more than \$5,000, imprisoned in a  
27 state correctional facility for a definite term or not less than one year nor more than five years, or  
28 both fined and imprisoned.

**§61-7-11. Brandishing deadly weapons; threatening or causing breach of the peace;  
criminal penalties.**

1 It shall be unlawful for any person armed with a firearm or other deadly weapon, whether  
2 licensed to carry the same or not, to carry, brandish or use such weapon in a way or manner to

3 cause, or threaten, a breach of the peace. Any person violating this section ~~shall be guilty of a~~  
4 Class 1 misdemeanor, ~~and, upon conviction thereof, shall be fined not less than \$50 nor more~~  
5 ~~than \$1,000, or shall be confined in the county jail not less than ninety days nor more than one~~  
6 ~~year, or both.~~

**§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by  
school principals; suspension of driver's license; possessing deadly weapons on  
premises housing courts of law and family law courts.**

1 (a) The Legislature finds that the safety and welfare of the citizens of this state are  
2 inextricably dependent upon assurances of safety for children attending and persons employed  
3 by schools in this state and for persons employed by the judicial department of this state. It is for  
4 the purpose of providing assurances of safety that §61-7-11a(b), §61-7-11a(g), and §61-7-11a(h),  
5 of this code and §61-7-11a(b)(2)(l) of this code are enacted as a reasonable regulation of the  
6 manner in which citizens may exercise the rights accorded to them pursuant to section 22, article  
7 III of the Constitution of the State of West Virginia.

8 (b) (1) It is unlawful to possess a firearm or other deadly weapon:

9 (A) On a school bus as defined in §17A-1-1 of this code;

10 (B) In or on the grounds of any primary or secondary educational facility of any type:  
11 *Provided*, That it shall not be unlawful to possess a firearm or other deadly weapon in or on the  
12 grounds of any private primary or secondary school, if such institution has adopted a written policy  
13 allowing for possession of firearms or other deadly weapons in the facility or on the grounds  
14 thereof;

15 (C) At a school-sponsored function that is taking place in a specific area that is owned,  
16 rented, or leased by the West Virginia Department of Education, the West Virginia Secondary  
17 Schools Activities Commission, a county school board, or local public school for the actual period  
18 of time the function is occurring.

19 (2) This subsection does not apply to:

20 (A) A law-enforcement officer employed by a federal, state, county, or municipal law-  
21 enforcement agency;

22 (B) Any probation officer appointed pursuant to §62-12-5 or Chapter 49 of this code in the  
23 performance of his or her duties;

24 (C) A retired law-enforcement officer who meets all the requirements to carry a firearm as  
25 a qualified retired law-enforcement officer under the Law-Enforcement Officer Safety Act of 2004,  
26 as amended, pursuant to 18 U.S.C. §926C(c), carries that firearm in a concealed manner, and  
27 has on their person official identification in accordance with that act;

28 (D) A person, other than a student of a primary and secondary facility, specifically  
29 authorized by the board of education of the county or principal of the school where the property  
30 is located to conduct programs with valid educational purposes;

31 (E) A person who, as otherwise permitted by the provisions of this article, possesses an  
32 unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly  
33 weapon in a locked motor vehicle;

34 (F) Programs or raffles conducted with the approval of the county board of education or  
35 school which include the display of unloaded firearms;

36 (G) The official mascot of West Virginia University, commonly known as the Mountaineer,  
37 acting in his or her official capacity;

38 (H) The official mascot of Parkersburg South High School, commonly known as the Patriot,  
39 acting in his or her official capacity; or

40 (I) ~~Any person, 21 years old or older, who has a valid concealed handgun permit may~~  
41 ~~possess a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other areas~~  
42 ~~of vehicular ingress or egress to a public school: Provided, That: Any person, 21 years old or~~  
43 ~~older, and not otherwise prohibited, may legally possess a concealed handgun while in a motor~~  
44 ~~vehicle in a parking lot, traffic circle, or other areas of vehicular ingress or egress to a public~~  
45 ~~school: *Provided, That:* (†) When he or she is occupying the vehicle the person stores the handgun~~

46 out of view from persons outside the vehicle; or (ii) When he or she is not occupying the vehicle  
47 the person stores the handgun out of view from persons outside the vehicle, the vehicle is locked,  
48 and the handgun is in a glove box or other interior compartment, or in a locked trunk, or in a locked  
49 container securely fixed to the vehicle.

50 (3) A person violating this subsection is guilty of a Class 5 felony ~~and, upon conviction~~  
51 ~~thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less~~  
52 ~~than two years nor more than 10 years, or fined not more than \$5,000, or both fined and~~  
53 ~~imprisoned.~~

54 (c) A school principal subject to the authority of the State Board of Education who  
55 discovers a violation of §61-7-11a(b) of this code shall report the violation as soon as possible to:

56 (1) The State Superintendent of Schools. The State Board of Education shall keep and  
57 maintain these reports and may prescribe rules establishing policy and procedures for making  
58 and delivering the reports as required by this subsection; and

59 (2) The appropriate local office of the State Police, county sheriff or municipal police  
60 agency.

61 (d) In addition to the methods of disposition provided by §49-5-1 et seq. of this code, a  
62 court which adjudicates a person who is 14 years of age or older as delinquent for a violation of  
63 §61-7-11a(b) of this code may order the Division of Motor Vehicles to suspend a driver's license  
64 or instruction permit issued to the person for a period of time as the court considers appropriate,  
65 not to extend beyond the person's nineteenth birthday. If the person has not been issued a driver's  
66 license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny  
67 the person's application for a license or permit for a period of time as the court considers  
68 appropriate, not to extend beyond the person's nineteenth birthday. A suspension ordered by the  
69 court pursuant to this subsection is effective upon the date of entry of the order. Where the court  
70 orders the suspension of a driver's license or instruction permit pursuant to this subsection, the  
71 court shall confiscate any driver's license or instruction permit in the adjudicated person's

72 possession and forward to the Division of Motor Vehicles.

73 (e)(1) If a person 18 years of age or older is convicted of violating §61-7-11a(b) of this  
74 code and if the person does not act to appeal the conviction within the time periods described in  
75 §61-7-11a(e)(2) of this code, the person's license, or privilege to operate a motor vehicle in this  
76 state shall be revoked in accordance with the provisions of this section.

77 (2) The clerk of the court in which the person is convicted as described in §61-7-11a(e)(1)  
78 of this code shall forward to the commissioner a transcript of the judgment of conviction. If the  
79 conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the  
80 transcript when the person convicted has not requested an appeal within 20 days of the  
81 sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk  
82 shall forward a transcript of the judgment of conviction when the person convicted has not filed a  
83 notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was  
84 entered.

85 (3) If, upon examination of the transcript of the judgment of conviction, the commissioner  
86 determines that the person was convicted as described in §61-7-11a(e)(1) of this code, the  
87 commissioner shall make and enter an order revoking the person's license or privilege to operate  
88 a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled  
89 in a secondary school, for a period of one year or until the person's twentieth birthday, whichever  
90 is the greater period. The order shall contain the reasons for the revocation and the revocation  
91 period. The order of suspension shall advise the person that because of the receipt of the court's  
92 transcript, a presumption exists that the person named in the order of suspension is the same  
93 person named in the transcript. The commissioner may grant an administrative hearing which  
94 substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a  
95 preliminary showing that a possibility exists that the person named in the notice of conviction is  
96 not the same person whose license is being suspended. The request for hearing shall be made  
97 within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing

98 is for the person requesting the hearing to present evidence that he or she is not the person  
99 named in the notice. If the commissioner grants an administrative hearing, the commissioner shall  
100 stay the license suspension pending the commissioner's order resulting from the hearing.

101 (4) For the purposes of this subsection, a person is convicted when he or she enters a  
102 plea of guilty or is found guilty by a court or jury.

103 (f)(1) It is unlawful for a parent, guardian, or custodian of a person less than 18 years of  
104 age who knows that the person is in violation of §61-7-11a(b) of this code or has reasonable  
105 cause to believe that the person's violation of §61-7-11a(b) of this code is imminent to fail to  
106 immediately report his or her knowledge or belief to the appropriate school or law-enforcement  
107 officials. (2) A person violating this subsection is guilty of a Class 1 misdemeanor and, upon  
108 conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than  
109 one year, or both fined and confined.

110 (g)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the  
111 premises of a court of law, including family courts.

112 (2) This subsection does not apply to:

113 (A) A law-enforcement officer acting in his or her official capacity; and

114 (B) A person exempted from the provisions of this subsection by order of record entered  
115 by a court with jurisdiction over the premises or offices.

116 (3) A person violating this subsection is guilty of a Class 1 misdemeanor and, upon  
117 conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than  
118 one year, or both fined and confined.

119 (h)(4) It is unlawful for a person to possess a firearm or other deadly weapon on the  
120 premises of a court of law, including family courts, with the intent to commit a crime. A person  
121 violating this subsection is guilty of a Class 5 felony.

122 (2) A person violating this subsection is guilty of a felony and, upon conviction thereof,  
123 shall be imprisoned in a state correctional facility for a definite term of years of not less than two

124 ~~years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.~~

125 (i) Nothing in this section may be construed to be in conflict with the provisions of federal  
126 law.

**§61-7-12. Wanton endangerment involving a firearm.**

1 Any person who wantonly performs any act with a firearm which creates a substantial risk  
2 of death or serious bodily injury to another shall be guilty of a Class 5 felony. ~~felony, and, upon~~  
3 ~~conviction thereof, shall be confined in the penitentiary for a definite term of years of not less than~~  
4 ~~one year nor more than five years, or, in the discretion of the court, confined in the county jail for~~  
5 ~~not more than one year, or fined not less than \$250 nor more than \$2,500, or both.~~

6 For purposes of this section, the term "firearm" shall have the same meaning ascribed to  
7 such term as set forth in §61-7-2 of this code.

**§61-7-14. Right of certain persons to limit possession of firearms on premises.**

1 This section may be referred to as "The Business Liability Protection Act".

2 (a) As used in this section:

3 "Parking lot" means any property that is used for parking motor vehicles and is available  
4 to customers, employees, or invitees for temporary or long-term parking or storage of motor  
5 vehicles: *Provided*, That for purposes of this section, parking lot does not include the private  
6 parking area at a business located at the primary residence of the property owner.

7 "Motor vehicle" means any privately-owned automobile, truck, minivan, sports utility  
8 vehicle, motor home, recreational vehicle, motorcycle, motor scooter, or any other vehicle  
9 operated on the roads of this state and, which is required to be registered under state law:  
10 *Provided*, That for purposes of this section, motor vehicle does not mean vehicles owned, rented,  
11 or leased by an employer and used by the employee in the course of employment.

12 "Employee" means any person, who is over 18 years of age, not prohibited from  
13 possessing firearms by the provisions of this code or federal law, and

14 (1) Works for salary, wages, or other remuneration;

15 (2) Is an independent contractor; or

16 (3) Is a volunteer, intern, or other similar individual for an employer.

17 “Employer” means any business that is a sole proprietorship, partnership, corporation,  
18 limited liability company, professional association, cooperative, joint venture, trust, firm,  
19 institution, association, or public-sector entity, that has employees.

20 “Invitee” means any business invitee, including a customer or visitor, who is lawfully on  
21 the premises of a public or private employer.

22 “Locked inside or locked to” means

23 (1) The vehicle is locked; or

24 (2) The firearm is in a locked trunk, glove box, or other interior compartment, or

25 (3) The firearm is in a locked container securely fixed to the vehicle; or

26 (4) The firearm is secured and locked to the vehicle itself by the use of some form of  
27 attachment and lock.

28 (b) Notwithstanding the provisions of this article, any owner, lessee, or other person  
29 charged with the care, custody, and control of real property may prohibit the carrying openly or  
30 concealing of any firearm or deadly weapon on property under his or her domain: *Provided*, That  
31 for purposes of this section “person” means an individual or any entity which may acquire title to  
32 real property: *Provided, however*, That for purposes of this section “natural person” means an  
33 individual human being.

34 (c) (1) Any natural person carrying or possessing a firearm or other deadly weapon on the  
35 property of another who refuses to temporarily relinquish possession of the firearm or other deadly  
36 weapon, upon being requested to do so, or to leave the premises, while in possession of the  
37 firearm or other deadly weapon, is guilty of a Class 2 misdemeanor, ~~and, upon conviction thereof,~~  
38 ~~shall be fined not more than \$1,000 or confined in jail not more than six months, or both: *Provided*,~~

39 ~~That~~

40 (2) The provisions of this section do not apply to a natural person as set forth in §61-7-

41 6(a)(5) through §61-7-6(a)(7) and §61-7-6(a)(9) through §61-7-6(a)(10) of this code while acting  
42 in his or her official capacity or to a natural person as set forth in §61-7-6(b)(1) through §61-7-  
43 6(b)(8) of this code, while acting in his or her official capacity: *Provided, however,* That under no  
44 circumstances, except as provided for by the provisions of §61-7-11a(b)(2)(A) through (I) of this  
45 code, may any natural person possess or carry or cause the possession or carrying of any firearm  
46 or other deadly weapon on the premises of any primary or secondary educational facility in this  
47 state unless the natural person is a law-enforcement officer or he or she has the express written  
48 permission of the county school superintendent.

49 (3) ~~Provided, however, That under~~ Under no circumstances, except as provided for by the  
50 provisions of §61-7-11a(b)(2)(A) through (I) of this code, may any natural person possess or carry  
51 or cause the possession or carrying of any firearm or other deadly weapon on the premises of  
52 any primary or secondary educational facility in this state unless the natural person is a law-  
53 enforcement officer or he or she has the express written permission of the county school  
54 superintendent.

55 (d) Prohibited acts. – Notwithstanding the provisions of subsections (b) and (c) of this  
56 section:

57 (1) No owner, lessee, or other person charged with the care, custody, and control of real  
58 property may prohibit any customer, employee, or invitee from possessing any legally owned  
59 firearm, when the firearm is

60 (A) Lawfully possessed;

61 (B) Out of view;

62 (C) Locked inside or locked to a motor vehicle in a parking lot; and

63 (D) When the customer, employee, or invitee is lawfully allowed to be present in that area.

64 (2) No owner, lessee, or other person charged with the care, custody, and control of real  
65 property may violate the privacy rights of a customer, employee, or invitee either

66 (A) By verbal or written inquiry, regarding the presence or absence of a firearm locked

67 inside or locked to a motor vehicle in a parking lot; or

68 (B) By conducting an actual search of a motor vehicle in a parking lot to ascertain the  
69 presence of a firearm within the vehicle: *Provided*, That a search of a motor vehicle in a parking  
70 lot to ascertain the presence of a firearm within that motor vehicle may only be conducted by on-  
71 duty, law enforcement personnel, in accordance with statutory and constitutional protections.

72 (C) No owner, lessee, or other person charged with the care, custody, and control of real  
73 property may take any action against a customer, employee, or invitee based upon verbal or  
74 written statements of any party concerning possession of a firearm stored inside a motor vehicle  
75 in a parking lot for lawful purposes, except upon statements made pertaining to unlawful purposes  
76 or threats of unlawful actions involving a firearm made in violation of §61-6-24 of this code.

77 (3) No employer may condition employment upon either:

78 (A) The fact that an employee or prospective employee holds or does not hold a license  
79 issued pursuant to §61-7-4 or §61-7-4a of this code; or

80 (B) An agreement with an employee or a prospective employee prohibiting that natural  
81 person from keeping a legal firearm locked inside or locked to a motor vehicle in a parking lot  
82 when the firearm is kept for lawful purposes.

83 (4) No owner, lessee, or other person charged with the care, custody, and control of real  
84 property may prohibit or attempt to prevent any customer, employee, or invitee from entering the  
85 parking lot of the person's place of business because the customer's, employee's, or invitee's  
86 motor vehicle contains a legal firearm being carried for lawful purposes that is out of view within  
87 the customer's, employee's, or invitee's motor vehicle.

88 (e) Limitations on duty of care; immunity from civil liability. —

89 (1) When subject to the provisions of subsection (d) of this section, an employer, owner,  
90 lessee, or other person charged with the care, custody, and control of real property has no duty  
91 of care related to the acts prohibited under said subsection.

92 (2) An employer, owner, lessee, or other person charged with the care, custody, and

93 control of real property is not liable in a civil action for money damages based upon any actions  
94 or inactions taken in compliance with subsection (d) of this section. The immunity provided in this  
95 subdivision does not extend to civil actions based on actions or inactions of employers, owners,  
96 lessees, or other persons charged with the care, custody, and control of real property unrelated  
97 to subsection (d) of this section.

98 (3) Nothing contained in this section may be interpreted to expand any existing duty or  
99 create any additional duty on the part of an employer, owner, lessee, or other person charged  
100 with the care, custody, and control of real property.

101 (f) Enforcement. – The Attorney General ~~is authorized to~~ may enforce the provisions of  
102 subsection (d) of this section and may bring an action seeking either:

103 (1) Injunctive or other appropriate equitable relief to protect the exercise or enjoyment of  
104 the rights secured in subsection (d) of any customer, employee, or invitee;

105 (2) Civil penalties of no more than \$5,000 for each violation of subsection (d) and all costs  
106 and attorney's fees associated with bringing the action; or

107 (3) Both the equitable relief and civil penalties described in subdivisions (1) and (2) of this  
108 section, including costs and attorney's fees. This action must be brought in the name of the state  
109 and instituted in the Circuit Court of Kanawha County. The Attorney General may negotiate a  
110 settlement with any alleged violator in the course of his or her enforcement of subsection (d) of  
111 this section.

112 (4) Notwithstanding any other provision in this section to the contrary, the authority granted  
113 to the Attorney General in this subsection does not affect the right of a customer, employee, or  
114 invitee aggrieved under the authority of subsection (d) of this section to bring an action for violation  
115 of the rights protected under this section in his or her own name and instituted in the circuit court  
116 for the county where the alleged violator resides, has a principal place of business, or where the  
117 alleged violation occurred. In any successful action brought by a customer, employee, or invitee  
118 aggrieved under the authority of subsection (d) of this section, the court may award injunctive or

119 other appropriate equitable relief and civil penalties as set forth in subdivisions one, two and three  
 120 of this subsection. In any action brought by a customer, employee, or invitee aggrieved under the  
 121 authority of subsection (d) of this section, the court shall award all court costs and attorney's fees  
 122 to the prevailing party.

**§61-7-15. Persons prohibited from committing violent crime while wearing body armor;  
 penalties.**

1 (a) A person who wears or is otherwise equipped with body armor while committing a  
 2 felony offense, an element of which is force, the threat of force, physical harm to another or the  
 3 use or presentment of a firearm or other deadly weapon, is guilty of a Class 5 felony, ~~and, upon~~  
 4 ~~conviction thereof, shall be confined in a correctional facility for not less than two nor more than~~  
 5 ~~ten years or fined not more than \$10,000, or both.~~

6 (b) As used in this section, "body armor" means a jacket, vest, or other similar apparel or  
 7 device constructed to provide ballistic resistance to penetration and deformation and intended to  
 8 protect the human torso against gunfire. The term may include, but is not limited to, apparel that  
 9 incorporates inserts, or variations in construction of the ballistic panel over small areas of the  
 10 torso, for the purpose of increasing the basic level of protection of the armor (whether ballistic or  
 11 blunt trauma) on localized areas. Body armor may be constructed of Kevlar or other similar fabric  
 12 and may be reinforced with other materials. Body armor may incorporate "threat" or "trauma"  
 13 plates (which are inserts that fit into the vest that will stop more powerful rounds) or may, as "threat  
 14 armor", incorporate hard panels.

**§61-7-15a. Use or presentation of a firearm during commission of a felony; penalties.**

1 As a separate and distinct offense, and in addition to any and all other offenses provided  
 2 for in this code, any person who, while engaged in the commission of a felony, uses, or presents  
 3 a firearm ~~shall be is~~ guilty of a Class 4 felony, ~~and, upon conviction, shall be imprisoned in a state~~  
 4 ~~correctional facility for not more than ten years.~~

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENY.**

**§ 61-8-1. Bigamy; defined; criminal penalty.**

1           Any person, being married, who, during the life of the former husband or wife, shall marry  
 2 another person in this state, or, if the marriage with such other person take place out of this state,  
 3 shall thereafter cohabit with such other person in this state, shall be guilty of a felony, and, upon  
 4 conviction, shall be confined in the penitentiary not less than one nor more than five years.

5           (a) A person is guilty of bigamy if he or she intentionally marries or purports to marry  
 6 another person when either person has a living spouse.

7           (b) In any prosecution under this section, it is a defense that at the time of the subsequent  
 8 marriage or purported marriage:

9           (1) The person reasonably believed that the prior spouse was dead; or

10           (2) A court had entered a judgment purporting to terminate, void, dissolve or annul any  
 11 prior disqualifying marriage and the actor did not know that the judgment was invalid; or

12           (3) The husband or wife by a former marriage has been absent for seven successive  
 13 years without being known to be alive; or

14           (4) The person reasonably believed that he or she was legally eligible to marry.

15           (c) The criminal offense of bigamy is a Class 1 misdemeanor.

**§ 61-8-2. Same – Effect of absence, divorce or void marriage.**

[Repealed]

**§ 61-8-5. ~~House of ill fame and assignation; penalties; jurisdiction of courts.~~ Prostitution;  
definitions.**

1           ~~(a) Any person who shall keep, set up, maintain, or operate any house, place, building,~~  
 2 ~~hotel, tourist camp, other structure, or part thereof, or vehicle, trailer, or other conveyance for the~~  
 3 ~~purpose of prostitution, lewdness, or assignation; or who shall own any place, house, hotel, tourist~~  
 4 ~~camp, other structure, or part thereof, or trailer or other conveyance knowing the same to be used~~  
 5 ~~for the purpose of prostitution, lewdness, or assignation, or who shall let, sublet, or rent any such~~  
 6 ~~place, premises, or conveyance to another with knowledge or good reason to know of the intention~~

7 of the lessee or rentee to use such place, premises, or conveyance for prostitution, lewdness, or  
8 assignation; or who shall offer, or offer to secure, another for the purpose of prostitution, or for  
9 any other lewd or indecent act; or who shall receive or offer or agree to receive any person into  
10 any house, place, building, hotel, tourist camp, or other structure, or vehicle, trailer, or other  
11 conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to  
12 remain there for such purpose; or who for another or others shall direct, take, or transport, or offer  
13 or agree to take or transport, or aid or assist in transporting, any person to any house, place,  
14 building, hotel, tourist camp, other structure, vehicle, trailer, or other conveyance, or to any other  
15 person with knowledge or having reasonable cause to believe that the purpose of such directing,  
16 taking, or transporting is prostitution, lewdness, or assignation; or who shall aid, abet, or  
17 participate in the doing of any acts herein prohibited, shall, upon conviction for the first offense  
18 under this section, be punished by imprisonment in the county jail for a period not less than six  
19 months nor more than one year, and by a fine of not less than \$100 and not to exceed \$250, and  
20 upon conviction for any subsequent offense under this section shall be punished by imprisonment  
21 in the penitentiary for a period of not less than one year nor more than five years.

22 (b) Any person who shall engage in prostitution, lewdness, or assignation, or who shall  
23 solicit, induce, entice, or procure another to commit an act of prostitution, lewdness, or  
24 assignation; or who shall reside in, enter, or remain in any house, place, building, hotel, tourist  
25 camp, or other structure, or enter or remain in any vehicle, trailer, or other conveyance for the  
26 purpose of prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing  
27 of any of the acts herein prohibited, shall, upon conviction for the first offense under this section,  
28 be punished by imprisonment in the county jail for a period of not less than sixty days nor more  
29 than six months, and by a fine of not less than \$50 and not to exceed \$100; and upon conviction  
30 for the second offense under this section, be punished by imprisonment in the county jail for a  
31 period of not less than six months nor more than one year, and by a fine of not less than \$100  
32 and not to exceed \$250, and upon conviction for any subsequent offense under this section shall

33 ~~be punished by imprisonment in the penitentiary for not less than one year nor more than three~~  
34 ~~years.~~

35 ~~The subsequent offense provision shall apply only to the pimp, panderer, solicitor,~~  
36 ~~operator or any person benefiting financially or otherwise from the earnings of a prostitute.~~

37 ~~(c) All leases and agreements, oral or written, for letting, subletting, or renting any house,~~  
38 ~~place, building, hotel, tourist camp, or other structure which is used for the purpose of prostitution,~~  
39 ~~lewdness, or assignation, shall be void from and after the date of any person who is a party to~~  
40 ~~such an agreement shall be convicted of an offense hereunder. The term "tourist camp" shall~~  
41 ~~include any temporary or permanent buildings, tents, cabins, or structures, or trailers, or other~~  
42 ~~vehicles which are maintained, offered, or used for dwelling or sleeping quarters for pay.~~

43 ~~(d) In the trial of any person, charged with a violation of any of the provisions of this section,~~  
44 ~~testimony concerning the reputation or character of any house, place, building, hotel, tourist camp,~~  
45 ~~or other structure, and of the person or persons who reside in or frequent same, and of the~~  
46 ~~defendant or defendants, shall be admissible in evidence in support of the charge. Justices of the~~  
47 ~~peace shall have concurrent jurisdiction with circuit, intermediate, and criminal courts to try and~~  
48 ~~determine the misdemeanors set forth and described in this section.~~

49 As to §§61-8-5a through 61-8-8b of this code, unless a different meaning is plainly  
50 required:

51 "Arranging" or "advancing" prostitution means any act or attempt to procure or otherwise  
52 make arrangements for the purpose of prostitution, including but not limited to knowingly:

53 (1) causing or aiding a person to commit or engage in prostitution;

54 (2) procuring or soliciting a patron for prostitution;

55 (3) providing a person or premises for prostitution purposes;

56 (4) operating or assisting in the operation of a house of prostitution or a prostitution  
57 enterprise; or,

58 (5) engages in any other conduct designed to institute, aid, or facilitate an act or enterprise

59 of prostitution;

60 “Domestic partner” means person with whom another person maintains a household and  
61 an intimate relationship other than a person to whom he or she is legally married.

62 “Spouse” means any legally married person.

63 “Prostitution” means the commercial act or practice of engaging in a sexual act or sexual  
64 contact with another person who is not their spouse or domestic partner in return for giving or  
65 receiving a fee, money, an equivalent of money, or a thing of value.

66 “Prostitution-related offenses” means those crimes and offenses defined in §§61-8-5  
67 through 8 of this code.

68 “Sexual act” means:

69 (1) The penetration, however slight, of the anus or vulva of another by a penis;

70 (2) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and  
71 the anus; or

72 (3) The penetration, however slight, of the anus or vulva by a hand or finger or by any  
73 object.

74 (4) The emission of semen or an orgasm is not required for the purposes of  
75 subparagraphs (1) to (3) of this paragraph.

76 “Sexual contact” means any intentional touching, either directly or through clothing, of the  
77 breasts, buttocks, anus or any part of the sex organs of another person, or intentional touching of  
78 any part of another person’s body by the actor’s sex organs, where the victim is not married to  
79 the actor and the touching is done for the purpose of gratifying the sexual desire of either party.

80 “Solicit for prostitution” means to invite, entice, offer, persuade, or agree to engage in  
81 prostitution.

82 “Person” means an individual eighteen years of age or older.

83 “Mentally defective” means that a person suffers from a mental disease or defect which  
84 renders that person incapable of appraising the nature of his or her conduct.

85 “Mentally incapacitated” means that a person is rendered temporarily incapable of  
86 appraising or controlling his or her conduct as a result of the influence of a controlled or  
87 intoxicating substance administered to that person without his or her consent or as a result of any  
88 other act committed upon that person without his or her consent.

89 “Physically helpless” means that a person is unconscious, or for any reason is physically  
90 unable to communicate unwillingness to an act.

91 “Prostitution enterprise” means two or more persons engaged in an arrangement,  
92 agreement, or organization with unified operation or common control for the purpose of  
93 conducting activities involving, or in any way related to, prostitution.

**§ 61-8-5a. Prostitution; solicitation; criminal provisions; penalties.**

1 (a) It is unlawful for any person to engage in prostitution or to solicit for prostitution. The  
2 offense of prostitution is a Class 3 misdemeanor. If an individual arrested for engaging in  
3 prostitution produces, before or at trial, a recognized and certified physician, laboratory, or  
4 medical report indicating the individual is free of any sexually transmitted disease (STD), the  
5 offense shall be reduced to a petty offense.

6 (b) Any person who knowingly solicits an individual for prostitution who is not at least 18  
7 years of age, or has reason to know they are soliciting an individual for prostitution who is not at  
8 least 18 years of age, is guilty of a Class 2 felony.

9 (c) Any person who knowingly solicits an individual for prostitution who is mentally  
10 defective or mentally incapacitated or has reason to know they are soliciting an individual for  
11 prostitution who is mentally defective or mentally incapacitated, is guilty of a Class 2 felony.

12 (d) In addition to any other sentence authorized by this section, a person who violates  
13 subsection (a) of this section, upon conviction may be ordered to pay a fine of up to \$500 to be  
14 deposited into the Crime Victims Compensation Fund as defined in §14-2A-4 of this code.

15 (e) In addition to any other sentence authorized by this section, a person who violates  
16 subsection (b) of this section, upon conviction may be ordered to pay a fine of up to \$5,500 to be

17 deposited into the Crime Victims Compensation Fund as defined in §14-2A-4.

**§ 61-8-6. Detention of person in place of prostitution; pandering, inducing, or causing a person to engage in prostitution; criminal provisions; penalty.**

1 (a)(1) Whoever shall ~~Whoever shall~~ Any person who by any means keep, hold, detain or restrain keeps,  
2 holds, detains or restrains any person in a house of prostitution or other place where prostitution  
3 is practiced or allowed; or ~~whoever shall~~ who directly or indirectly, ~~keep, hold, detain or restrain,~~  
4 keeps, holds, detains or restrains or ~~attempt~~ attempts to keep, hold, detain or restrain, in any  
5 house of prostitution or other place where prostitution is practiced or allowed, any person by any  
6 means, for the purpose of compelling such person, directly or indirectly, to pay, liquidate or cancel  
7 any debt, dues or obligations incurred or said to have been incurred by such person ~~shall,~~ upon  
8 conviction for the first offense under this ~~section,~~ subsection, is guilty of a class 1 misdemeanor.  
9 Any person convicted of a subsequent offense under this subsection, is guilty of a class 6 felony.  
10 ~~be punished by imprisonment in the county jail for a period of not less than six months nor more~~  
11 ~~than one year, and by a fine of not less than one hundred not more than five hundred dollars,~~  
12 ~~and upon conviction for any subsequent offense under this section, shall be punished by~~  
13 ~~imprisonment in the penitentiary for not less than one nor more than three years: *Provided, That*~~  
14 ~~in any offense under this section where the person is so kept, held, detained or restrained is a~~  
15 ~~minor, any person violating the provisions of this section shall be guilty of a felony, and, upon~~  
16 ~~conviction, shall be confined in the penitentiary not less than two years nor more than five years~~  
17 ~~or fined not more than five thousand dollars, or both.~~

18 (2) In any offense under this section where the person so kept, held, detained, or  
19 restrained is a minor, any person violating the provisions of this subsection is guilty of a class 5  
20 felony.

21 (b)(1) It is unlawful for any person to recruit or attempt to recruit any individual to engage  
22 in prostitution. An offense of this subsection is a Class 1 misdemeanor. Each subsequent offense  
23 of this subsection is a Class 6 felony.

24 (2) If the recruitment or attempt to recruit any individual to engage in prostitution involves  
25 any element of coercion, detention, physical force, force of will, or compulsion, the offense is a  
26 Class 6 felony.

27 (3) If the recruitment or attempt to recruit involves any individual under the age of 18, the  
28 offense is a Class 4 felony

29 (c) It is unlawful for any parent, guardian, or other person having legal custody of an  
30 individual under 18 years of age to consent to the individual being taken, detained, or used by  
31 any person, for the purpose of prostitution. Any person who violates this subsection is guilty of a  
32 Class 5 felony

33 (d) It is unlawful for any parent, guardian, or other person having legal custody of an  
34 individual who is mentally defective, mentally incapacitated, or physically helpless, to permit or  
35 consent to the individual being recruited, taken, compelled, detained, or used by any person for  
36 the purpose of prostitution. Any person who violates this subsection is guilty of a Class 5 felony

37 (e) Any person who receives any money or other thing of value for or on account of  
38 arranging or advancing an act of prostitution is guilty of a Class 1 misdemeanor.

39 (f) Any person who by force, fraud, intimidation, or threats causes a spouse or domestic  
40 partner of that person to engage in an act of prostitution, shall be guilty of a Class 5 felony.

**§ 61-8-6a. Abducting, enticing, or harboring a child for purposes of prostitution; penalties.**

1 (a) It is unlawful for any person, for purposes of prostitution, to:

2 (1) Knowingly coerce, persuade, entice, or forcibly abduct a child under 18 years of age  
3 from his or her home or usual place of residence, or from the custody and control of the child's  
4 parents or legal guardian; or

5 (2) Knowingly secrete or harbor any child so coerced, persuaded, enticed, or abducted  
6 from his or her home or usual abode, or from the custody and control of the child's parents or  
7 guardian.

8 (b) A person who violates or attempts or conspires to violate subsection (a)(1) or (a)(2) of

9 this section is guilty of a Class 2 felony.

**§ 61-8-7. Procuring for house of prostitution; penalty; venue; competency as witness; marriage no defense. Promoting or permitting prostitution; house of prostitution; evidence; and penalty.**

1 ~~Any person who shall procure an inmate for a house of prostitution, or who, by promises,~~  
2 ~~threats, violence, or by any device or scheme, shall cause, induce, persuade or encourage a~~  
3 ~~person to become an inmate of a house of prostitution, or shall procure a place as inmate in a~~  
4 ~~house of prostitution for a person; or any person who shall, by promises, threats, violence, or by~~  
5 ~~any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution~~  
6 ~~to remain therein as such inmate; or any person who shall, by fraud or artifice, or by duress of~~  
7 ~~person or goods, or by abuse of any position of confidence or authority, procure any person to~~  
8 ~~become an inmate of a house of ill fame, or to enter any place in which prostitution is encouraged~~  
9 ~~or allowed within this state, or to come into or leave this state for the purpose of prostitution, or~~  
10 ~~who shall procure any person to become an inmate of a house of ill fame within this state or to~~  
11 ~~come into or leave this state for the purpose of prostitution; or shall receive or give or agree to~~  
12 ~~receive or give any money or thing of value for procuring or attempting to procure any person to~~  
13 ~~become an inmate of a house of ill fame within this state, or to come into or leave this state for~~  
14 ~~the purpose of prostitution, shall be guilty of pandering, and, upon a first conviction for an offense~~  
15 ~~under this section, shall be punished by imprisonment in the county jail for a period of not less~~  
16 ~~than six months nor more than one year, and by a fine of not less than \$100 nor more than \$500,~~  
17 ~~and upon conviction for any subsequent offense under this section shall be punished by~~  
18 ~~imprisonment in the penitentiary for a period of not less than one nor more than five years:~~  
19 ~~Provided, That where the inmate referred to in this section is a minor, any person violating the~~  
20 ~~provisions of this section shall be guilty of a felony, and, upon conviction shall be confined in the~~  
21 ~~penitentiary not less than two years nor more than five years or fined not more than \$5,000, or~~  
22 ~~both.~~

23 ~~It shall not be a defense to prosecution for any of the acts prohibited in this section that~~  
24 ~~any part of such act or acts shall have been committed outside of this state, and the offense shall~~  
25 ~~in such case be deemed and alleged to have been committed and the offender tried and punished~~  
26 ~~in any county in which the prostitution was intended to be practiced, or in which the offense was~~  
27 ~~consummated, or any overt act in furtherance of the offense was committed.~~

28 ~~Any such person shall be a competent witness in any prosecution under this section to~~  
29 ~~testify for or against the accused as to any transaction, or as to conversation with the accused, or~~  
30 ~~by the accused with another person or persons in his or her presence, notwithstanding his or her~~  
31 ~~having married the accused before or after the violation of any of the provisions of this section,~~  
32 ~~whether called as a witness during the existence of the marriage or after its dissolution. The act~~  
33 ~~or state of marriage shall not be a defense to any violation of this section.~~

34 (a)(1) A person commits the offense of promoting prostitution if he or she knowingly  
35 advances prostitution or profits from prostitution by managing, supervising, controlling, procuring  
36 an individual for a house of prostitution or for an individual, having a possessory or proprietary  
37 interest in, or owning, either alone or in association with another, a house of prostitution or a  
38 prostitution enterprise involving two or more prostitutes.

39 (2) For the purpose of this section, a house of prostitution includes any house, place,  
40 building, hotel, other structure, conveyance, and all affiliated premises used by persons for the  
41 purpose of prostitution. Any oral or written lease or agreement to let, rent or sublet any house of  
42 prostitution is void from the date of conviction of this section.

43 (3) Evidence concerning the reputation or character of the place in question is admissible.

44 (b) The first offense of promoting prostitution is a Class 1 misdemeanor. Any subsequent  
45 offense is a Class 6 felony.

46 (c) In addition to any other sentence authorized by this section, a person who violates this  
47 section, upon conviction, shall be ordered to pay a fine of \$2,500 to be deposited into the Crime  
48 Victims Compensation Fund as defined in §14-2A-4 of this code.

**§ 61-8-8. Sexual Solicitation; penalty. ~~Receiving support from prostitution; pimping; penalty; prostitute may testify~~**

1 Any person who, knowing another person to be a prostitute, shall live or derive support or  
2 maintenance, in whole or in part, from the earnings or proceeds of the prostitution of such  
3 prostitute, or from money loaned or advanced to or charged against such prostitution by any  
4 keeper or manager or inmate of a house or other place where prostitution is practiced or allowed,  
5 or shall tout or receive compensation for touting for such prostitution, shall be guilty of pimping,  
6 and, upon the first conviction for such offense, shall be punished by imprisonment in the county  
7 jail for a period of not less than six months nor more than one year, and by a fine of not less than  
8 \$100 nor more than \$500; and, upon a conviction for any subsequent offense hereunder, shall be  
9 punished by imprisonment in the penitentiary for a period of not less than one nor more than three  
10 years: Provided, That where the prostitute referred to in this section is a minor, any person  
11 violating the provisions of this section shall be guilty of a felony, and, upon conviction shall be  
12 confined in the penitentiary not less than two years or fined not more than \$5,000, or both. A  
13 prostitute shall be a competent witness in any prosecution hereunder to testify for or against the  
14 accused as to any transaction or conversation with the accused, or by the accused with another  
15 person or persons in the presence of the prostitute, even if the prostitute may have married the  
16 accused before or after the violation of any of the provisions of this section, whether called as a  
17 witness during the existence of the marriage or after its dissolution.

18 (a) A person commits the offense of sexual solicitation if he or she knowingly advances  
19 prostitution by:

20 (1) Offering or agreeing to pay a fee to a person to engage in sexual activity with him or  
21 her or another person; or

22 (2) Soliciting or requesting a person to engage in sexual activity with him or her in return  
23 for a fee.

24 (b) The offense of sexual solicitation is a Class 3 misdemeanor.

25 (c) It is an affirmative defense to prosecution under this section that the person engaged  
26 in an act of sexual solicitation as a result of being a victim of human trafficking, as defined in §61-  
27 14-1(6) of this code.

28 (d) In addition to any other sentence authorized by this section, a person who violates this  
29 section upon conviction shall be ordered to pay a fine of \$500 to be deposited into the Crime  
30 Victims Compensation Fund as defined in §14-2A-4 of this code.

**§ 61-8-8a. Affirmative defense to prostitution.**

1 (a) It is an affirmative defense to prostitution that:

2 (1) The person engaged in an act of prostitution because they were a victim of human  
3 trafficking, as defined in §61-14-1(6) of this code, and in good faith cooperated with law  
4 enforcement in the investigation and prosecution of that offense of human trafficking; or,

5 (2) The person engaged in an act of prostitution was secreted away or abducted against  
6 their will for the purpose of prostitution, as addressed in §61-2-14 of this code; or,

7 (3) The person engaged in an act of prostitution was physically helpless, mentally  
8 defective, or mentally incapacitated.

**§ 61-8-8b. Separate offenses; aggravating circumstances; restitution; Compensation**  
**Award to Victims of Crimes; law enforcement notification; forfeiture, and**  
**debarment.**

1 (a) Separate violations. — For purposes of §§61-8-5 to 61-8-8 of this code, each adult or  
2 minor victim constitutes a separate offense.

3 (b) Aggravating circumstance. —

4 (1) Notwithstanding any provision of this code to the contrary, if an individual is convicted  
5 of an offense under §61-8-6 or §61-8-6a of this code, and the trier of fact makes a finding that the  
6 offense involved an aggravating circumstance, the individual may not be eligible for parole before  
7 -serving one-third of the period of confinement adjudged in the sentence.

8 (2) For purposes of this subsection, “aggravating circumstance” means the individual

9 recruited, enticed, or obtained the victim of the offense from a shelter or facility that serves  
10 runaway youths, children in foster care, the homeless or victims of human trafficking, domestic  
11 violence or sexual assault.

12 (c) Restitution. —

13 (1) The court shall order a person convicted of an offense under this article to pay  
14 restitution to the victim of the offense.

15 (2) A judgment order for restitution may be enforced by the state or a victim named in the  
16 order to receive the restitution in the same manner as a judgment in a civil action in accordance  
17 with §61-11A-4 of this code, including filing a lien against the person, firm or corporation against  
18 whom restitution is ordered.

19 (3) The court shall order restitution under subdivision (1) of this subsection even if the  
20 victim is unavailable to accept payment of restitution.

21 (4) If the victim does not claim restitution ordered under subdivision (1) of this subsection  
22 within five years of the entry of the order, the restitution shall be paid to the Crime Victims  
23 Compensation Fund created under §14-2A-4 of this code.

24 (d) Eligibility for Compensation Award to Victims of Crimes, §§14-2A-1, et seq. —  
25 Notwithstanding the definition of victim in §14-2A-3 of this code, a victim of any offense under this  
26 article is a victim for all purposes of §§14-2A-1, et seq of this code: *Provided*, That for purposes  
27 of §14-2A-14(b) of this code, if otherwise qualified, a victim of any offense under this article may  
28 not be denied eligibility solely for the failure to report to law enforcement within the designated  
29 time frame.

30 (e) Law Enforcement Notification. — If a law-enforcement officer encounters a child who  
31 reasonably appears to be a victim of an offense under this article, the officer shall notify the  
32 Department of Health and Human Resources. If available, the Department of Health and Human  
33 Resources may notify the Domestic Violence Program serving the area where the child is found.

34 (f) Forfeiture; Debarment. —

35 (1) The following are declared to be contraband and no person may have a property  
36 interest in them:

37 (A) All property which is directly or indirectly used or intended for use in any manner to  
38 facilitate a violation of this article; and

39 (B) Any property constituting or derived from gross profits or other proceeds obtained from  
40 a violation of this article.

41 (2) In any action under this section, the court may enter such restraining orders or take  
42 other appropriate action, including acceptance of performance bonds, in connection with any  
43 interest that is subject to forfeiture.

44 (3) Forfeiture actions under this section shall use the procedure set forth in §§60A-7-704  
45 to 708 of this code.

46 (4) Any person or business entity convicted of a violation of this article shall be debarred  
47 from state or local government contracts.

**§61-8-9. Indecent exposure.**

1 (a) A person is guilty of indecent exposure when such person, without permission of the  
2 victim, intentionally exposes his or her sex organs or anus or the sex organs or anus of another  
3 person, or intentionally causes such exposure by another or engages in any overt act of sexual  
4 gratification, and does so under circumstances in which the person knows that the conduct is  
5 likely to cause affront or alarm: *Provided,* That it is not considered indecent exposure for a mother  
6 to breast feed a child in any location, public or private.

7 (b) Except as provided in subsection (c) of this section, any person who violates the  
8 provisions of this section shall be guilty of a Class 3 misdemeanor ~~and, upon conviction thereof,~~  
9 ~~shall be confined in jail not more than ninety days, or fined not more than \$250, or both fined and~~  
10 ~~confined.~~

11 (c) Any person who violates the provisions of subsection (a) of this section by intentionally  
12 exposing himself or herself to another person and the exposure was done for the purpose of

13 sexual gratification, is guilty of a Class 1 misdemeanor. ~~and, upon conviction thereof, shall be~~  
 14 ~~fined not more than \$500 or confined in jail not more than twelve months, or both. For a second~~  
 15 ~~offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not~~  
 16 ~~more than \$1,000 and confined in jail for not less than thirty days nor more than twelve months.~~  
 17 For a third or subsequent offense, the person is guilty of a Class 6 felony. ~~and, upon conviction~~  
 18 ~~thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility for not~~  
 19 ~~less than one year nor more than five years.~~

**§61-8-9a. Child abuse; education; curriculum.**

1 [Repealed]

**§61-8-10. Administering anesthetics to female save in presence of third person; penalty.**

1 [Repealed].

**§61-8-11. Breathing, inhaling, or drinking certain intoxicating compounds; penalty**

1 (a) No person shall may intentionally breathe, inhale, or drink any compound, liquid, or  
 2 chemical containing acetone, amylacetate, benzol or benzene, butyl acetate, butyl alcohol, carbon  
 3 tetrachloride, chloroform, cyclohexanone, ethanol or ethyl alcohol, ethyl acetate, hexane,  
 4 isopropanol or isopropyl alcohol, isopropyl acetate, methyl "cellosolve" acetate, methyl ethyl  
 5 ketone, methyl isobutyl ketone, toluol or toluene, trichloroethylene, tricresyl phosphate, xylol or  
 6 xylene, or any other solvent, material substance, chemical, or combination thereof, having the  
 7 property of releasing toxic vapors for the purpose of inducing a condition of intoxication,  
 8 stupefaction, depression, giddiness, paralysis, or irrational behavior or in any manner changing,  
 9 distorting, or disturbing the Auditory, visual, or mental processes. For the purposes of this section,  
 10 any condition so induced shall be ~~deemed~~ considered to be an intoxicated condition.

11 (b) This section does not apply to:

12 (1) Any person who commits any act described herein pursuant to the direction or  
 13 prescription of a licensed physician or dentist authorized to so direct or prescribe, including the  
 14 inhalation of anesthesia for medical or dental purposes; or

15 (2) To any alcoholic liquor or nonintoxicating beer as defined in section five, article one,  
16 chapter sixty of this code.

17 (c) Any person who violates the provisions of this section is guilty of a Class 3  
18 misdemeanor. ~~and, upon conviction thereof, shall be fined not more than \$100 or be confined in~~  
19 ~~a county or regional jail for not more than sixty days, or both fined and imprisoned.~~

**§61-8-12. Incest; penalty**

1 a) For the purposes of this section:

2 (1) "Aunt" means the sister of a person's mother or father;

3 (2) "Brother" means the son of a person's mother or father;

4 (3) "Daughter" means a person's natural daughter, adoptive daughter, or the daughter of  
5 a person's husband or wife;

6 (4) "Father" means a person's natural father, adoptive father, or the husband of a person's  
7 mother;

8 (5) "Granddaughter" means the daughter of a person's son or daughter;

9 (6) "Grandfather" means the father of a person's father or mother;

10 (7) "Grandmother" means the mother of a person's father or mother;

11 (8) "Grandson" means the son of a person's son or daughter;

12 (9) "Mother" means a person's natural mother, adoptive mother, or the wife of a person's  
13 father;

14 (10) "Niece" means the daughter of a person's brother or sister;

15 (11) "Nephew" means the son of a person's brother or sister;

16 (12) "Sexual intercourse" means any act between persons involving penetration, however  
17 slight, of the female sex organ by the male sex organ or involving contact between the sex organs  
18 of one person and the mouth or anus of another person;

19 (13) "Sexual intrusion" means any act between persons involving penetration, however  
20 slight, of the female sex organ or of the anus of any person by an object for the purpose of

21 degrading or humiliating the person so penetrated or for gratifying the sexual desire of either  
22 party;

23 (14) "Sister" means the daughter of a person's father or mother;

24 (15) "Son" means a person's natural son, adoptive son, or the son of a person's husband  
25 or wife; and (16) "Uncle" means the brother of a person's father or mother;

26 (17) "Step-relative" means a relative by marriage.

27 (b) (1) A person is guilty of incest when such that person engages in sexual intercourse  
28 or sexual intrusion with his or her father, mother, brother, sister, daughter, son, grandfather,  
29 grandmother, grandson, granddaughter, nephew, niece, uncle, or aunt.

30 (2) For the purposes of this section, sexual intercourse between two consenting adult step-  
31 relatives is not prohibited.

32 (c) Any person who violates the provisions of this section shall be guilty of a Class 3 felony,  
33 ~~and, upon conviction thereof, shall be imprisoned in the penitentiary not less than 5 years nor~~  
34 ~~more than 15 years, or fined not less than \$500 nor more than \$5,000 and imprisoned in the~~  
35 ~~penitentiary not less than five years nor more than fifteen years.~~

36 (d) In addition to any penalty provided under this section and any restitution which may be  
37 ordered by the court under §§61-11A-1, *et seq.* of this code, the court may order any person  
38 convicted under the provisions of this section, where the victim is a minor, to pay all or any portion  
39 of the cost of medical, psychological, or psychiatric treatment of the victim, the need for which  
40 results from the act or acts for which the person is convicted, whether or not the victim is  
41 considered to have sustained bodily injury.

42 (e) In any case where a person is convicted of an offense described in this section against  
43 a child and further has or may have custodial, visitation, or other parental rights to the child, the  
44 court shall find that the person is an abusing parent within the meaning of §49-4-601 through §49-  
45 4-610 of this code, and shall take further action in accord with the provisions of those sections.

**§61-8-14. Disinterment or displacement of dead body or part thereof; damage to cemetery**

**or graveyard; penalties; damages in civil action.**

1 (a) Any person who unlawfully and intentionally disinters or displaces a dead human body,  
2 or any part of a dead human body, placed or deposited in any vault, mausoleum or any temporary  
3 or permanent burial place, removes personal effects of the decedent removes or damages  
4 caskets, surrounds, outer burial containers, or any other device used in making the original burial;  
5 transports unlawfully removed human remains from the cemetery; or knowingly receives  
6 unlawfully removed human remains from the cemetery is guilty of a Class 6 felony, ~~and, upon~~  
7 ~~conviction thereof, shall be confined in a state correctional facility for a determinate sentence of~~  
8 ~~not more than five years.~~

9 (b)(1) Any person who intentionally desecrates any tomb, plot, monument, memorial, or  
10 marker in a cemetery, or any gate, door, fence, wall, post, or railing, or any enclosure for the  
11 protection of a cemetery or any property in a cemetery, graveyard, mausoleum, or other  
12 designated human burial site is guilty of a Class 1 misdemeanor, ~~and, upon conviction thereof,~~  
13 ~~shall be fined not more than \$2,000, or confined in jail not more than one year, or both fined and~~  
14 ~~confined.~~

15 (2) Any person who intentionally and without legal right destroys, cuts, breaks, removes,  
16 or injures any building, statuary, ornamentation, landscape contents, including a tree, shrub,  
17 flower, or plant, within the limits of a cemetery, is guilty of a Class 1 misdemeanor, ~~and, upon~~  
18 ~~conviction thereof, shall be fined not more than \$2,000, or confined in jail not more than one year,~~  
19 ~~or both fined and confined.~~

20 (3) For the purposes of this subsection, "desecrate" means destroying, cutting, mutilating,  
21 effacing, injuring, tearing down, removing, defacing, damaging or otherwise physically mistreating  
22 in a way that a reasonable person knows will outrage the sensibilities of persons likely to observe  
23 or discover his or her actions.

**§61-8-15. Prohibition on certain demonstrations at funerals.**

1 (a) No person may carry out, with respect to any cemetery or building at which a funeral

2 or memorial service or ceremony is to be held, a demonstration within 500 feet of the cemetery  
3 or building that:

4 (1) Is conducted during the period beginning 60 minutes before and ending 60 minutes  
5 after the funeral or memorial service or ceremony is held; and

6 (2) Includes, as a part of such demonstration, any individual willfully making or assisting  
7 in the making of any noise or diversion that disturbs or tends to disturb the peace or good order  
8 of the funeral or memorial service or ceremony.

9 (b) For purposes of this section, the term "demonstration" includes the following:

10 (1) Any picketing or similar conduct.

11 (2) Any oration, speech, use of sound amplification equipment or device, or similar conduct  
12 before an assembled group of people that is not part of a funeral or memorial service or ceremony.

13 (3) The display of any placard, banner, flag, or similar device, unless such a display is part  
14 of a funeral or memorial service or ceremony.

15 (4) The distribution of any handbill, pamphlet, leaflet, or other written or printed matter  
16 other than a program distributed as part of a funeral or memorial service or ceremony.

17 (c) Any person who violates the provisions of subsection (a) is guilty of a Class 1  
18 misdemeanor ~~and, upon conviction thereof, shall be confined in jail for an indeterminate sentence~~  
19 ~~of not more than one year and fined not less than \$200 nor more than \$5.~~

**§61-8-16. Obscene, anonymous, harassing, repeated and threatening telephone calls;  
penalty.**

1 (a) It is unlawful for any person with intent to harass or abuse another by means of  
2 telephone to:

3 (1) Make any comment, request, suggestion, or proposal which is obscene; or

4 (2) Make a telephone call, whether or not conversation ensues, without disclosing his or  
5 her identity and with intent to harass any person at the called number; or

6 (3) Make or cause the telephone of another repeatedly or continuously to ring, with intent

7 to harass any person at the called number; or

8 (4) Make repeated telephone calls, during which conversation ensues, with intent to  
9 harass any person at the called number; or

10 (5) Threaten to commit a crime against any person or property.

11 (b) It ~~shall be~~ is unlawful for any person to knowingly permit any telephone under his or  
12 her control to be used for any purpose prohibited by this section.

13 (c) Any offense committed under this section may be ~~deemed~~ considered to have occurred  
14 at the place at which the telephone call was made, or the place at which the telephone call was  
15 received.

16 (d) Any person who violates any provision of this section is guilty of a Class 1  
17 misdemeanor, ~~and, upon conviction thereof, shall be fined not more than \$500, or confined in jail~~  
18 ~~not more than six months, or both fined and confined.~~

**§61-8-19. Cruelty to animals; penalties; exclusions.**

1 (a)(1) It is unlawful for any person to intentionally, knowingly, or recklessly,

2 (A) Mistreat an animal in cruel manner;

3 (B) Abandon an animal;

4 (C) Withhold;

5 (i) Proper sustenance, including food or water;

6 (ii) Shelter that protects from the elements of weather; or

7 (iii) Medical treatment, necessary to sustain normal health and fitness or to end the  
8 suffering of any animal;

9 (D) Abandon an animal to die;

10 (E) Leave an animal unattended and confined in a motor vehicle when physical injury to  
11 or death of the animal is likely to result;

12 (F) Ride an animal when it is physically unfit;

13 (G) Bait or harass an animal for the purpose of making it perform for a person's

14 amusement;

15 (H) Cruelly chain or tether an animal; or

16 (I) Use, train or possess a domesticated animal for the purpose of seizing, detaining or  
17 maltreating any other domesticated animal.

18 (2) Any person in violation of subdivision (1) of this subsection is guilty of a Class 2  
19 misdemeanor ~~and, upon conviction thereof, shall be fined not less than \$300 nor more than~~  
20 ~~\$2,000 or confined in jail not more than six months, or both.~~

21 (b) A person who intentionally tortures, or mutilates or maliciously kills an animal, or  
22 causes, procures, or authorizes any other person to torture, mutilate or maliciously kill an animal,  
23 is guilty of a Class 6 felony ~~and, upon conviction thereof, shall be confined in a correctional facility~~  
24 ~~not less than one nor more than five years and be fined not less than \$1,000 nor more than~~  
25 ~~\$5,000.~~ For the purposes of this subsection, "torture" means an action taken for the primary  
26 purpose of inflicting pain.

27 (c) A person, other than a licensed veterinarian or a person acting under the direction or  
28 with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to  
29 be administered to any animal participating in any contest any controlled substance or any other  
30 drug for the purpose of altering or otherwise affecting said animal's performance is guilty of a  
31 Class 3 misdemeanor ~~and, upon conviction thereof, shall be fined not less than \$500 nor more~~  
32 ~~than \$2,000.~~

33 (d) Any person convicted of a violation of this section forfeits his or her interest in any  
34 animal and all interest in the animal vests in the humane society or county pound of the county in  
35 which the conviction was rendered and the person is, in addition to any fine imposed, liable for  
36 any costs incurred or to be incurred by the humane society or county pound as a result.

37 (e) For the purpose of this section, the term "controlled substance" has the same meaning  
38 ascribed to it by §60A-1-100(d) of this code.

39 (f) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or

40 animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game  
41 farms if kept and maintained according to usual and accepted standards of livestock, poultry,  
42 gaming fowl or wildlife or game farm production and management, nor to humane use of animals  
43 or activities regulated under and in conformity with the provisions of 7 U.S.C. §2131, *et seq.*, and  
44 the regulations promulgated thereunder, as both statutes and regulations are in effect on the  
45 effective date of this section.

46 (g) Notwithstanding the provisions of subsection (a) of this section, any person convicted  
47 of a second or subsequent violation of subsection (a) is guilty of a Class 1 misdemeanor and,  
48 ~~shall be confined in jail for a period of not less than ninety days nor more than one year, fined not~~  
49 ~~less than \$500 nor more than \$3,000, or both.~~ The incarceration set forth in this subsection is  
50 mandatory unless the provisions of subsection (h) of this section are complied with.

51 (h)(1) Notwithstanding any provision of this code to the contrary, no person who has been  
52 convicted of a violation of the provisions of subsection (a) or (b) of this section may be granted  
53 probation until the defendant has undergone a complete psychiatric or psychological evaluation  
54 and the court has reviewed the evaluation. Unless the defendant is determined by the court to be  
55 indigent, he or she is responsible for the cost of the evaluation.

56 (2) For any person convicted of a violation of subsection (a) or (b) of this section, the court  
57 may, in addition to the penalties provided in this section, impose a requirement that he or she  
58 complete a program of anger management intervention for perpetrators of animal cruelty. Unless  
59 the defendant is determined by the court to be indigent, he or she is responsible for the cost of  
60 the program.

61 (i) In addition to any other penalty which can may be imposed for a violation of this section,  
62 a court shall prohibit any person so convicted from possessing, owning, or residing with any  
63 animal or type of animal for a period of five years following entry of a misdemeanor conviction  
64 and fifteen years following entry of a felony conviction. A violation under this subsection is a petty  
65 offense including ~~misdemeanor punishable by a fine not exceeding \$2,000 and forfeiture of the~~

66 animal.

**§61-8-19a. Animal fighting ventures prohibited.**

1 (a) For the purpose of this article, “animal fighting venture” means any event that involves  
2 a fight conducted or to be conducted between at least two animals for purposes of sport, wagering,  
3 or entertainment: *Provided*, That it shall not be deemed to include any lawful activity the primary  
4 purpose of which involves the use of one or more animals in racing or in hunting another animal:  
5 *Provided, however*, That “animal fighting venture” does not include the lawful use of livestock as  
6 such is defined in §19-10B-2 of this code or exotic species of animals bred or possessed for  
7 exhibition purposes when such exhibition purposes do not include animal fighting or training  
8 therefor.

9 (b) It is unlawful for any person to conduct, finance, manage, supervise, direct, engage in,  
10 be employed at, or sell an admission to any animal fighting venture or to knowingly allow property  
11 under his care, custody or control to be so used.

12 (c) It is unlawful for any person to possess an animal with the intent to engage the animal  
13 in an animal fighting venture.

14 (d) Any person who violates the provisions of this section is guilty of a Class 6 felony  
15 ~~misdemeanor and, upon conviction thereof, shall be fined not less than \$300 and not more~~  
16 ~~than \$2,000, or confined in the county jail not exceeding one year, or both so fined and confined:~~  
17 ~~Provided, That if the animal is a wild animal, game animal or fur-bearing animal, as defined in~~  
18 ~~section two, article one, chapter twenty of this code, or wildlife not indigenous to West Virginia, or~~  
19 ~~of a canine, feline, porcine, bovine, or equine species whether wild or domesticated, the person~~  
20 ~~who violates the provisions of this section is guilty of a felony and, upon conviction thereof, shall~~  
21 ~~be fined not less than \$2,500 and not more than \$5,000, and imprisoned in a state correctional~~  
22 ~~facility for not less than two nor more than five years, or both fined and imprisoned.~~

23 (e) Any person convicted of a violation of this section shall be divested of ownership and  
24 control of such animals and liable for all costs of their care and maintenance pursuant to §7-10-4

25 of this code.

**§61-8-19b. Attendance at animal fighting ventures prohibited; penalty.**

1 (a) It is unlawful for any person to knowingly attend or knowingly cause an individual who  
2 has not attained the age of e18 to attend, an animal fighting venture involving animals as defined  
3 in §61-8-19a of this code.

4 (b) Any person who violates the provisions of this section is guilty of a Class 1  
5 misdemeanor ~~and, upon conviction thereof, shall be fined not less than \$300 and not more~~  
6 ~~than \$2,000, or confined in the county or regional jail not more than one year, or both fined and~~  
7 ~~imprisoned.~~

8 ~~(c) Notwithstanding the provisions of subsection (b) of this section, any person convicted~~  
9 ~~of a third or subsequent violation of subsection (a) of this section is guilty of a felony and, shall be~~  
10 ~~fined not less than \$2,500 and not more than \$5,000, imprisoned in a state correctional facility~~  
11 ~~not less than one year nor more than five years, or both fined and imprisoned.~~

**§61-8-19c. Wagering at animal fighting venture prohibited; penalty.**

1 (a) It is unlawful for any person to bet or wager money or any other thing of value in any  
2 location or place where an animal fighting venture occurs.

3 (b) Any person who violates the provisions of this section is guilty of a Class 1  
4 misdemeanor ~~and, upon conviction thereof, shall be fined not less than \$300 and not more than~~  
5 ~~\$2,000, or confined in jail not more than one year, or both fined and imprisoned.~~

6 ~~(c) Notwithstanding the provisions of subsection (b) of this section, any person who is~~  
7 ~~convicted of a third or subsequent violation of this section is guilty of a felony and, upon conviction~~  
8 ~~thereof, shall be fined not less than \$2,500 and not more than \$5,000, or imprisoned in a state~~  
9 ~~correctional facility not less than one year nor more than five years, or both fined and imprisoned.~~

**§61-8-20. Keeping or using live birds to be shot at; penalty.**

1 [Repealed]

**§61-8-21. Search warrants relating to cruelty to animals.**

1 (a) If a complaint is made that complainant has reason to believe that an animal has been  
2 or is being cruelly treated, or that the laws related to cruelty to animals have been or are being  
3 violated in any particular building or place, a warrant may be issued under this article to search  
4 such building or place intended for use or which is or has been used as a means of committing  
5 the criminal offense of cruelty to animals.

6 (b) A warrant may issue only upon complaint or affirmation setting forth the facts  
7 establishing the grounds for issuing the warrant, supported by affidavit sworn to or affirmed before  
8 the judge or magistrate.

9 (c) If the judge or magistrate is satisfied there is probable cause to believe that grounds  
10 therefor exist, he shall issue a search warrant. ~~has reasonable cause to believe there are~~  
11 reasonable made to a court or magistrate which is authorized to issue warrants in criminal cases  
12 that the complainant believes, and, such court or magistrate, if satisfied that cause for such belief,  
13 they shall issue a search warrant

14 (d) The search warrant shall:

15 (1) Note that evidence exists to believe that the laws in relation to cruelty to animals have  
16 been, are being, or are about to be violated in a particular location, building or place;

17 (2) Particularly describe and identify the subject property, the location, the name of any  
18 person to be searched or particularly describe any person to be searched, and authorize any  
19 sheriff, deputy sheriff, constable, or police officer, natural resources police officers as established  
20 in §20-7-4 of this code, or any other duly authorized law enforcement officer to search such  
21 person, building or place;

22 (3) Authorize any law enforcement officer to make a search of said building and arrest any  
23 person found violating §61-8-19, §61-8-19a, §61-8-19b, or §61-8-19c of this code, and any other  
24 criminal offenses in plain view;

25 (4) Authorize any law enforcement officer to seize and take custody of any animal believed  
26 to be cruelly treated; and,

27 (5) Reflect that no search may be made after sunset, unless specially authorized by the  
28 judge or magistrate upon satisfactory cause shown.

29 (e) This section may not be construed as a limitation on the power of law enforcement  
30 officers to seize animals as evidence at the time of the arrest.

**§61-8-22. Search warrants relating to birds and animals kept for fighting.**

1 If complaint is made to a court judge or magistrate authorized to issue warrants in criminal  
2 cases that the complainant believes, and has reasonable cause to believe, that preparations are  
3 being made for an exhibition of the fighting of birds, dogs, or other animals, or that such exhibition  
4 is in progress, or that birds, dogs, or other animals are kept shall, in accordance with §61-8-21 of  
5 this code, issue a search warrant authorizing any sheriff, deputy sheriff, constable, or police  
6 officer, or natural resources police officers as denoted and established in §20-7-4 of this code, to  
7 search such place, building, or tenement at any hour of the day or night, and take possession of  
8 all such birds, dogs or other animals there found, and any animal fighting paraphernalia such as,  
9 but not limited to, hanging scales, treadmills, spring poles, electrocution cords, gaffs – blades  
10 attached to rooster legs for cockfighting, breaking sticks – used to pry open dogs' jaws in  
11 dogfights, first aid (“go”) kits, deceased animals, pedigrees, registration papers, fight records,  
12 cash, guns, calendars, date books, business cards, magazines, photos, trace evidence such as  
13 wound tissue, feathers or blood, as well as objects used for training animals to fight such as  
14 treadmills and hot walkers, and to arrest all persons there present at any such exhibition or where  
15 preparations for such an exhibition are being made, or where birds, dogs, or other animals are  
16 kept or trained for fighting.

**§61-8-23. Search without warrant where there is an exhibition of the fighting of birds or animals.**

1 Any officer authorized to serve criminal process may, without warrant, enter any property,  
2 place, building, or tenement in which there is an exhibition of the fighting of birds, dogs, or other  
3 animals, or in which preparations are being made for such an exhibition and arrest all persons

4 there present and take possession of and remove from the place of seizure the birds, dogs, or  
5 other animals engaged in fighting or there found and intended to be used or engaged in fighting,  
6 or kept or trained for fighting and hold the same in custody subject to the order of the court as  
7 hereinafter provided.

**§61-8-25. Requiring children to beg, sing, or play musical instruments in streets; penalty.**

1 [Repealed]

**§61-8-26. Permitting children to sing, dance or act in a dance house, etc.; penalty.**

1 [Repealed]

**§61-8-27. Unlawful admission of children to dance house, etc.; penalty.**

1 Any proprietor or any person in charge of a dance house, concert saloon, theater,  
2 museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors  
3 are sold or given away, or any place of entertainment injurious to health or morals who admits or  
4 permits to remain therein any minor under the age of 18 years, unless accompanied by his or her  
5 parent or guardian, is guilty of a petty offense; ~~misdemeanor and, on conviction thereof, shall be~~  
6 ~~punished by a fine not exceeding \$200.~~ *Provided*, That there is exemption from this prohibition  
7 for: (a) A private hotel, private nine-hole golf course, private resort hotel, and private golf club  
8 licensed pursuant to §60-7-1 et seq. of this code and in compliance with §60-7-2(g)(8), §60-7-  
9 2(h)(7), §60-7-2(i)(7), and §60-7-2(j)(7) of this code; (b) a private club with more than 1,000  
10 members that is in good standing with the Alcohol Beverage Control Commissioner, that has been  
11 approved by the Alcohol Beverage Control Commissioner and which has designated certain  
12 seating areas on its licensed premises as nonalcoholic liquor and nonintoxicating beer areas, as  
13 noted in the licensee's floorplan; or (c) a private fair and festival that is in compliance with §60-7-  
14 2(f)(7) of this code, by utilizing a mandatory carding or identification program whereby all  
15 members or guests being served or sold alcoholic liquors, nonintoxicating beer, or nonintoxicating  
16 craft beer are asked and must provide their proper identification to verify their identity and further  
17 that they are of legal drinking age, 21 years of age or older, prior to each sale or service of

18 alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer.

**§61-8-27a. Use of false identification, etc., by person underage; penalty.**

1 Any person who exhibits or displays a false or erroneous birth certificate, draft card,  
2 registration card or certificate, license, or identification card or certificate of any kind or character,  
3 or who exhibits or displays any certificate, card or license of any kind or character not his own, for  
4 the purpose of purchasing or drinking beer or liquor or gaining admittance to any establishment,  
5 from which he or she would otherwise be barred by reason of age, shall be guilty of a petty offense.  
6 ~~misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than \$25 nor~~  
7 ~~more than \$100, and, in the discretion of the court, may be imprisoned in the county jail not~~  
8 ~~exceeding thirty days.~~

**§61-8-28. Criminal invasion of privacy; penalties.**

1 (a) For the purposes of this section, the words or terms defined in this subsection have  
2 the meanings ascribed to them. These definitions are applicable unless a different meaning  
3 clearly appears from the context:

4 "A person fully or partially nude" means a male or female who is either clothed or unclothed  
5 so that: (A) All or any part of his or her genitals, pubic area or buttocks is visible; or (B) in the case  
6 of a female only, a part of a nipple of her breast is visible and is without a fully opaque covering;

7 "To visually portray" a person means to create a reproducible image of that person by  
8 means of:

9 (1) A photograph;

10 (2) A motion picture;

11 (3) A video tape;

12 (4) A digital recording; or

13 (5) Any other mechanical or electronic recording process or device that can preserve, for  
14 later viewing, a visual image of a person; and

15 (3) "Place where a reasonable person would have an expectation of privacy" means a

16 place where a reasonable person would believe that he or she could, in privacy, be fully or partially  
17 nude without expecting that the act of exposing his or her body was being visually portrayed by  
18 another person.

19 (b) It is unlawful for a person to knowingly visually portray another person without that  
20 other person's knowledge, while that other person is fully or partially nude and is in a place where  
21 a reasonable person would have an expectation of privacy. A person who violates the provisions  
22 of this subsection is guilty of a Class 1 misdemeanor and, ~~upon conviction, shall be confined in a~~  
23 ~~county or regional jail for not more than one year or fined not more than \$5,000, or both.~~

24 (c) Any person who displays or distributes visual images of another person with knowledge  
25 that said visual images were obtained in violation of subsection (b) of this section is guilty of a  
26 Class 1 misdemeanor and, ~~upon conviction, shall be confined in a county or regional jail for not~~  
27 ~~more than one year or fined not more than \$5,000, or both.~~

28 (d) A person who is convicted of a second or subsequent violation of subsection (b) or (c)  
29 of this section is guilty of a Class 6 felony, ~~and, upon conviction, shall be confined in a state~~  
30 ~~correctional facility for not less than one year nor more than five years or fined not more than~~  
31 ~~\$10,000, or both.~~

**§61-8-28a. Nonconsensual disclosure of private intimate images; definitions; and penalties.**

1 (a) As used in this section:

2 "Disclose" means to publish, publicly display, distribute, deliver, circulate, or disseminate  
3 by any means, including, but not limited to, electronic transmission.

4 "Image" means a photograph, videotape, motion picture film, digital recording, or any  
5 product of any mechanical or electronic recording process or device that can preserve, for later  
6 viewing, a visual image.

7 "Intimate parts" means a person's genitalia, pubic area, anus or female post-pubescent  
8 breasts.

9 To “publicly disclose” means to disclose an image to one or more persons other than those  
10 persons whom the person depicted understood would view the image at the time it was captured.

11 (b) No person may knowingly and intentionally disclose, cause to be disclosed or threaten  
12 to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce, an  
13 image of another which shows the intimate parts of the depicted person or shows the depicted  
14 person engaged in sexually explicit conduct which was captured under circumstances where the  
15 person depicted had a reasonable expectation that the image would not be publicly disclosed.

16 (c) (1) A person convicted of a violation of subsection (b) of this section is guilty of a Class  
17 6 felony, ~~misdemeanor and, upon conviction thereof, shall be confined in jail for not more than~~  
18 ~~one year, fined not less than \$1,000 nor more than \$5,000, or both confined and fined.~~

19 (2) Notwithstanding the provisions of subdivision (1) of this subsection, a person convicted  
20 of a second or subsequent violation of subsection (b) of this section is guilty of a Class 5 felony  
21 ~~and, upon conviction thereof, shall be imprisoned in a state correctional facility for not more than~~  
22 ~~three years, fined not less than \$2,500 nor more than \$10,000, or both imprisoned and fined.~~

23 (d) The provisions of this section do not apply to:

24 (1) Images disclosed with the prior written consent of the person depicted;

25 (2) Images depicting the person voluntarily exposing himself or herself in a public or  
26 commercial setting; or

27 (3) Disclosures made through the reporting of illegal conduct or the lawful and common  
28 practices of law enforcement, criminal reporting, legal proceeding, or medical treatment.

29 (e) Nothing in this section shall be construed to impose liability on the provider of an  
30 interactive computer service as defined by 47 U. S. C. §230(f)(2), an information service as  
31 defined by 47 U. S. C. §153(24), or telecommunications service as defined by 47 U. S. C.  
32 §153(53), for content provided by another person.

**§61-8-29. Criminal loitering by persons on supervised release.**

1 (a) Any person serving a period of supervised release of 10 years or more pursuant to ~~the~~

2 ~~provision of §62-12-26 of this code who loiters within 1,000 feet of the property line of the~~  
3 ~~residence or workplace of a victim of a sexually violent offense for which the person was convicted~~  
4 ~~shall be is guilty of a Class 3 misdemeanor and, upon conviction thereof, shall be confined in jail~~  
5 ~~for not more than thirty days.~~

6 (b) Any person serving a period of supervised release of 10 years or more pursuant to ~~the~~  
7 ~~provisions of §62-12-26 of this code for an offense where the victim was a minor who loiters within~~  
8 1,000 feet of the property line of a facility or business the principal purpose of which is the  
9 education, entertainment or care of minor children, playground, athletic facility or school bus stop  
10 shall be guilty of a Class 3 misdemeanor and, upon conviction thereof, shall be confined in jail for  
11 a period of not more than thirty days.

12 (c) A person does not violate the provisions of subsection (a) or (b) of this section unless  
13 he or she has previously been asked to leave the proscribed location by an authorized person  
14 and thereafter refuses to leave or leaves and thereafter returns to the proscribed location.

15 (d) As used in this section:

16 "Authorized person" means:

17 (1) A law-enforcement officer acting in his or her official capacity;

18 (2) A security officer employed by a business or facility to protect persons or property  
19 acting in his or her employment capacity;

20 (3) An owner, manager or employee of a facility or business having a principal purpose  
21 the caring for, education or entertainment of minors;

22 (4) A victim or parent, guardian or lawful temporary or permanent custodian thereof;

23 (5) An employee of a county Board of Education acting in his or her employment capacity.

24 "Facility or business, the principal purpose of which is the education, entertainment or care  
25 of minor children" means:

26 (1) A pre-school, primary, intermediate, middle, or high school, either public or private;

27 (2) A childcare facility;

28 (3) A park;

29 (4) An athletic facility used by minors;

30 (5) A school bus stop.

31 “Loitering” means to enter or remain on property while having no legitimate purpose or, if  
32 a legitimate purpose exists, remaining on that property beyond the time necessary to fulfill that  
33 purpose.

34 (e) Nothing in this section ~~shall~~ may be construed to prohibit or limit a person’s presence  
35 within one thousand feet of a location or facility referenced in this section if the person is there  
36 present for the purposes of supervision, counseling, or other activity in which the person is  
37 directed to participate as a condition of supervision or where the person has the express  
38 permission of his supervising officer to be present.

**§61-8-30. Photography of a corpse or person being provided medical care or assistance;  
prohibitions; exceptions; Jonathan’s Law.**

1 (a) As used in this section:

2 “Disclose” means to sell, manufacture, give, provide, lend, trade, mail, deliver, transfer,  
3 publish, distribute, circulate, disseminate, present, exhibit, advertise, offer or otherwise  
4 make available or make known to any third party.

5 “First responder” means law-enforcement officers, firefighters, emergency medical  
6 services personnel and other similar individuals authorized to respond to calls for public  
7 safety services or emergency medical assistance.

8 (b)(1) A first responder who is present at a motor vehicle accident or other emergency  
9 situation for the purpose of providing public safety services or medical care or assistance ~~shall~~  
10 may not photograph, film, videotape, record or otherwise reproduce in any manner the image of  
11 a human corpse or a person being provided medical care or assistance, except for a legitimate  
12 law-enforcement purpose, public safety purpose, health care purpose, insurance purpose, legal  
13 investigation or legal proceeding involving an injured or deceased person or pursuant to a court

14 order.

15 (2) A first responder ~~shall~~ may not knowingly disclose any photograph, film, videotape,  
 16 record or other reproduction of the image of a human corpse or a person being provided medical  
 17 care or assistance at the scene of a motor vehicle accident or other emergency situation without  
 18 prior written consent of the injured person, the person's next-of-kin if the injured person cannot  
 19 provide consent, or personal representative under law of a deceased person, unless that  
 20 disclosure is for a legitimate law enforcement purpose, public safety purpose, health care  
 21 purpose, insurance purpose, legal investigation or legal proceeding involving an injured or  
 22 deceased person or pursuant to a court order.

23 (3) Any person who violates subdivision (1) or (2) of this subsection is guilty of a petty  
 24 offense. ~~misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more~~  
 25 ~~than \$500.~~ For a second offense, the person is guilty of a Class 3 misdemeanor. ~~and, upon~~  
 26 ~~conviction thereof, shall be confined in jail for twenty-four hours and shall be fined not less than~~  
 27 ~~\$100 nor more than \$750.~~ For a third or subsequent offense, the person is guilty of a Class 2  
 28 ~~misdemeanor. and, upon conviction thereof, shall be confined in jail for not less than twenty-four~~  
 29 ~~hours nor more than six months and shall be fined not less than \$1,000 nor more than \$5,000.~~

30 (c) This section shall be known as "Jonathan's Law".

**§61-8-31. Therapeutic deception; penalties.**

1 (a) In this section, unless a different meaning plainly is required:

2 "Client" or "patient" means a person who is being treated clinically or medically by a  
 3 psychotherapist for more than one session or initial visit.

4 "Psychotherapist" means any of the following:

5 (1) A psychiatrist licensed pursuant to §30-3-1, *et seq.*; of this code;

6 (2) A psychologist licensed pursuant to Psychologists; School Psychologists, in §30-21-1,  
 7 *et seq.* of this code, or a medical psychologist licensed pursuant to §30-3-1 *et seq.* of this code;

8 (3) A licensed clinical social worker licensed pursuant to §30-30-1 *et seq.* of this code; or

9 (4) A mental health counselor licensed pursuant to §30-31-1, *et seq.* of this code.

10 (3) "Sexual contact" has the same meaning as provided in §61-8B-1 *et seq.* of this code.

11 (4) "Sexual intercourse" has the same meaning as provided in §61-8B-1 *et seq.* of this  
12 code.

13 (5) "Therapeutic deception" means a representation by the psychotherapist to the patient  
14 or client that sexual contact or sexual intercourse with the psychotherapist is consistent with or  
15 part of the treatment of the patient or client.

16 (b) It is unlawful for any psychotherapist, or any person who fraudulently represents  
17 himself or herself as a psychotherapist, to engage in sexual contact or sexual intercourse with a  
18 client or patient by means of therapeutic deception.

19 (c) For purposes of this section, consent of the patient or client is not a defense, regardless  
20 of the age of the patient or client.

21 (d) Any person who violates subsection (b) of this section is guilty of a Class 6 felony, and,  
22 ~~upon conviction thereof, shall be fined not more than \$10,000.00 or imprisoned in a state~~  
23 ~~correctional facility for not less than one year nor more than five years, or both fined and~~  
24 ~~imprisoned.~~

## **ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE MATTER TO MINORS.**

### **§ 61-8A-1. Definitions.**

1 When used in this article, the following words, and any variations thereof required by the  
2 context, shall have the meaning ascribed to them in this section:

3 "Adult" means a person 18 years of age or older.

4 "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed  
5 data processing device performing logical, arithmetic or storage functions ~~and includes~~ including  
6 remote cloud based data storage, and any other data storage facility or communication facility

7 directly related to or operating in conjunction with such device. As used in this article, computer  
8 includes file servers, mainframe systems, desktop personal computers, laptop personal  
9 computers, tablet personal computers, cellular telephones, game consoles and any electronic  
10 data storage device or equipment. The term “computer” includes any connected or directly related  
11 device, equipment or facility which enables the computer to store, retrieve or communicate  
12 computer programs, computer data or the results of computer operations to or from a person,  
13 another computer, or another device, but such term does not include an automated typewriter or  
14 typesetter, a portable hand-held calculator or other similar device.

15 “Computer network” means the interconnection of hardware or wireless communication  
16 lines with a computer through remote terminals, or a complex consisting of two or more  
17 interconnected computers.

18 “Display” means to show, exhibit, or expose matter, in a manner visible to general or  
19 invited public, including minors. As used in this article, display shall include the placing or  
20 exhibiting of matter on or in a billboard, viewing screen, theater, marquee, newsstand, display  
21 rack, window, showcase, display case or similar public place.

22 “Distribute” means to transfer possession, transport, transmit, sell or rent, whether with or  
23 without consideration.

24 “Employee” means any individual who renders personal services in the course of a  
25 business, who receives compensation and who has no financial interest in the ownership or  
26 operation of the business other than his or her salary or wages.

27 “Internet” means the international computer network of both federal and nonfederal  
28 interoperable packet switched data networks.

29 “Knowledge of the character of the matter” means having awareness of or notice of the  
30 overall sexual content and character of matter as depicting, representing, or describing obscene  
31 matter.

32 “Matter” means any visual, audio, or physical item, article, production transmission,

33 publication, exhibition, or live performance, or reproduction thereof, including any two- or three-  
34 dimensional visual or written material, film, picture, drawing, video, graphic, or computer  
35 generated or reproduced image; or any book, magazine, newspaper or other visual or written  
36 material; or any motion picture or other pictorial representation; or any statue or other figure; or  
37 any recording, transcription, or mechanical, chemical, or electrical reproduction; or any other  
38 articles, video laser disc, computer hardware and software, or computer generated images or  
39 message recording, transcription, or object, or any public or commercial live exhibition performed  
40 for consideration or before an audience of one or more.

41 "Minor" means an unemancipated person under 18 years of age.

42 "Obscene matter" means matter that:

43 (1) An average person, applying contemporary adult community standards, would find,  
44 taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or  
45 is pandered to a prurient interest;

46 (2) An average person, applying community standards, would find depicts or describes, in  
47 a patently offensive way, sexually explicit conduct; and

48 (3) A reasonable person would find, taken as a whole, lacks serious literary, artistic,  
49 political, or scientific value.

50 "Parent" includes a biological or adoptive parent, legal guardian, or legal custodian.

51 "Person" means any adult, partnership, firm, association, corporation, or other legal entity.

52 "Sexually explicit conduct" means an ultimate sexual act, normal or perverted, actual, or  
53 simulated, including sexual intercourse, sodomy, oral copulation, sexual bestiality, sexual sadism  
54 and masochism, masturbation, excretory functions and lewd exhibition of the genitals.

**§ 61-8A-2. Distribution and display to minor of obscene matter; penalties; defenses.**

1 (a) Any adult, with knowledge of the character of the matter, who knowingly and  
2 intentionally distributes, offers to distribute, or displays to a minor any obscene matter, is guilty of

3 a class 6 felony and, upon conviction thereof, shall be fined not more than \$25,000, or confined  
4 in a state correctional facility for not more than five years, or both.

5 (b) It is a defense to a prosecution under the provisions of this section that the obscene  
6 matter:

7 (1) Was displayed in an area from which minors are physically excluded and the matter  
8 so located cannot be viewed by a minor from nonrestricted areas; or

9 (2) Was covered by a device, commonly known as a "blinder rack," such that the lower  
10 two thirds of the cover of the material is not exposed to view; or

11 (3) Was enclosed in an opaque wrapper such that the lower two thirds of the cover of the  
12 material was not exposed to view; or

13 (4) Was displayed or distributed after taking reasonable steps to receive, obtain or check  
14 an adult identification card, such as a driver's license or other technically or reasonably feasible  
15 means of verification of age.

16 (c) It is a defense to an alleged violation under this section that a parent had taken  
17 reasonable steps to limit the minor's access to the obscene matter.

**§ 61-8A-4. Use of obscene matter with intent to seduce minor.**

1 Any adult, having knowledge of the character of the matter, who knows or believes that a  
2 person is a minor at least four years younger than the adult, and distributes, offers to distribute or  
3 displays by any means any obscene matter to the person who is known or believed to be a minor  
4 at least four years younger than the adult, and such distribution, offer to distribute, or display is  
5 undertaken with the intent or for the purpose of facilitating the sexual seduction or abuse of the  
6 minor, is guilty of a class 5 felony and, upon conviction thereof, shall be fined not more than  
7 \$25,000, or imprisoned in a state correctional facility for not more than five years, or both. For a  
8 second and each subsequent commission of such offense, such person is guilty of a felony and,  
9 upon conviction, shall be fined not more than \$50,000 or imprisoned in a state correctional facility  
10 for not more than ten years, or both.

**§ 61-8A-5. Employment or use of minor to produce obscene matter or assist in doing sexually explicit conduct; penalties.**

1 Any adult who, with knowledge that a person is a minor or who fails to exercise reasonable  
2 care in ascertaining the age of a minor, hires, employs, or uses such minor to produce obscene  
3 matter or to do or assist in doing any sexually explicit conduct, is guilty of a class 5 felony and,  
4 upon conviction thereof, shall be fined not more than \$50,000 or confined in a state correctional  
5 facility for not more than ten years, or both.

**ARTICLE 8B. SEXUAL OFFENSES.**

**§ 61-8B-3. Sexual assault in the first degree.**

1 (a) A person is guilty of sexual assault in the first degree when:

2 (1) The person engages in sexual intercourse or sexual intrusion with another person and,  
3 in so doing:

4 (i) Inflicts serious bodily injury upon anyone; or

5 (ii) Employs a deadly weapon in the commission of the act; or

6 (2) The person, being 14 years old or more, engages in sexual intercourse or sexual  
7 intrusion with another person who is younger than 12 years old and is not married to that person.

8 (b) Any person violating the provisions of this section is guilty of a class 2 felony and, upon  
9 conviction thereof, shall be imprisoned in a state correctional facility not less than fifteen nor more  
10 than thirty-five years, or fined not less than \$1,000 nor more than \$10,000 and imprisoned in a  
11 state correctional facility not less than fifteen nor more than thirty-five years.

12 (c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any  
13 person violating the provisions of subsection (a) of this section who is 18 years of age or older  
14 and whose victim is younger than 12 years of age, is a class 2 felony shall be imprisonment in a  
15 state correctional facility for not less than twenty-five nor more than one hundred years and a fine  
16 of not less than \$5,000 nor more than \$25,000.

**§ 61-8B-4. Sexual assault in the second degree.**

1 (a) A person is guilty of sexual assault in the second degree when:

2 (1) Such person engages in sexual intercourse or sexual intrusion with another person  
3 without the person's consent, and the lack of consent results from forcible compulsion; or

4 (2) Such person engages in sexual intercourse or sexual intrusion with another person  
5 who is physically helpless; or,

6 (b) Any person who violates the provisions of this section shall be guilty of a class 3 felony;  
7 ~~and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten nor more~~  
8 ~~than twenty-five years, or fined not less than \$1,000 nor more than \$10,000 and imprisoned in~~  
9 ~~the penitentiary not less than ten nor more than twenty-five years.~~

**§ 61-8B-4a. Sexual extortion.**

1 (a) For the purposes of this section,

2 "Recording" includes without limitation an image, photograph, or video;

3 "Sexually explicit conduct" means sexual conduct, sexual intercourse, or sexual intrusion;

4 "State of nudity" means:

5 (1) The appearance of a human anus, human genitals, or female breast below a point  
6 immediately above the top of the areola; or

7 (2) A state of dress that fails to opaquely cover a human anus, human genitals, or a female  
8 breast below a point immediately above the top of the areola;

9 (b) A person is guilty of sexual extortion if:

10 (1) With purpose to coerce another person to engage in sexual contact or sexual  
11 intercourse, the person communicates a threat to:

12 (A) Damage the property or harm the reputation of the other person; or

13 (B) Produce or distribute a recording of the other person engaged in sexually explicit  
14 conduct or depicted in a state of nudity; or,

15 (2) With purpose to produce or distribute a recording of a person in a state of nudity or  
16 engaged in sexually explicit conduct, the person communicates a threat to:

- 17           (A) Damage the property or harm the reputation of the other person; or
- 18           (B) produce or distribute a recording of the other person engaged in sexually explicit  
 19 conduct or depicted in a state of nudity; or,
- 20           (3) The person knowingly causes another person to engage in sexual contact, sexually  
 21 explicit conduct, or to produce or distribute a recording of a person in a state of nudity or engaged  
 22 in a sexually explicit conduct by communicating a threat to:
- 23           (A) Damage the property or harm the reputation of the other person; or
- 24           (B) Produce or distribute a recording of the other person depicted in a state of nudity or  
 25 engaged in sexually explicit conduct.
- 26           (c) Any person who violates the provisions of this section is guilty of a class 5 felony.

**§ 61-8B-5. Sexual assault in the third degree.**

- 1           (a) A person is guilty of sexual assault in the third degree when:
- 2           (1) The person engages in sexual intercourse or sexual intrusion with another person who  
 3 is mentally defective or mentally incapacitated; or
- 4           (2) The person, being sixteen years old or more, engages in sexual intercourse or sexual  
 5 intrusion with another person who is less than 16 years old and who is at least four years younger  
 6 than the defendant and is not married to the defendant.
- 7           (b) Any person violating the provisions of this section is guilty of a class 6 felony ~~and, upon~~  
 8 ~~conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor~~  
 9 ~~more than five years, or fined not more than \$10,000 and imprisoned in a state correctional facility~~  
 10 ~~not less than one year nor more than five years.~~

**§ 61-8B-7. Sexual abuse in the first degree.**

- 1           (a) A person is guilty of sexual abuse in the first degree when:
- 2           (1) Such person subjects another person to sexual contact without their consent, and the  
 3 lack of consent results from forcible compulsion; or
- 4           (2) Such person subjects another person to sexual contact who is physically helpless; or

5 (3) Such person, being 14 years old or more, subjects another person to sexual contact  
6 who is younger than 12 years old.

7 (b) Any person who violates the provisions of this section shall be guilty of a class 6 felony;  
8 and, ~~upon conviction thereof, shall be imprisoned in a state correctional facility not less than one~~  
9 ~~year nor more than five years, or fined not more than \$10,000 and imprisoned in a state~~  
10 ~~correctional facility not less than one year nor more than five years.~~

11 (c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any  
12 person violating the provisions of subsection (a) of this section who is 18 years of age or older  
13 and whose victim is younger than 12 years of age, ~~shall be~~ is guilty of a class 3 felony ~~shall be~~  
14 ~~imprisonment for not less than five nor more than twenty five years and fined not less than \$1,000~~  
15 ~~nor more than \$5,000.~~

**§ 61-8B-8. Sexual abuse in the second degree.**

1 (a) A person is guilty of sexual abuse in the second degree when such person subjects  
2 another person to sexual contact who is mentally defective or mentally incapacitated.

3 (b) Any person who violates the provisions of this section ~~shall be~~ is guilty of a class 1  
4 ~~misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than~~  
5 ~~twelve months, or fined not more than \$500 and confined in the county jail not more than twelve~~  
6 ~~months.~~

**§ 61-8B-9. Sexual abuse in the third degree.**

1 (a) A person is guilty of sexual abuse in the third degree when he subjects another person  
2 to sexual contact without the latter's consent, when such lack of consent is due to the victim's  
3 incapacity to consent by reason of being less than 16 years old.

4 (b) In any prosecution under this section it is a defense that:

5 (1) The defendant was less than 16 years old; or

6 (2) The defendant was less than four years older than the victim.

7 (c) Any person who violates the provisions of this section ~~shall be~~ is guilty of a class 3

8 misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than  
9 ninety days, or fined not more than \$500 and confined in the county jail not more than ninety days.

**§ 61-8B-9b. Enhanced penalties for subsequent offenses committed by those previously  
convicted of sexually violent offenses against children.**

1 (a) Notwithstanding any provision of this article to the contrary, any person who has been  
2 convicted of a sexually violent offense, as defined in §15-12-2 of this code, against a victim under  
3 the age of 12 years old and thereafter commits and thereafter is convicted of one of the following  
4 offenses shall be subject to the following penalties unless another provision of this code  
5 authorizes a longer sentence:

6 (1) For a violation of §61-8B-3 of this code, the penalty shall be a class 1 felony;  
7 ~~imprisonment in a state correctional facility for not less than fifty nor more than one hundred fifty~~  
8 ~~years;~~

9 (2) For a violation of §61-8B-4 of this code, the penalty shall be a class 2 felony;  
10 ~~imprisonment in a state correctional facility for not less than thirty nor more than one hundred~~  
11 ~~years;~~

12 (3) For a violation of §61-8B-5 of this code, the penalty shall be a class 4 felony;  
13 ~~imprisonment in a state correctional facility for not less than five nor more than twenty-five years;~~

14 (4) For a violation of §61-8B-7 of this code, the penalty shall be a class 3 felony;  
15 ~~imprisonment in a state correctional facility for not less than ten nor more than thirty-five years;~~  
16 ~~and~~

17 (5) Notwithstanding the penalty provisions of §61-8B-8 of this code, a violation of its  
18 provisions by a person previously convicted of a sexually violent offense, as defined in §15-12-2  
19 of this code, shall be a class 4 felony and, ~~the penalty therefor shall be imprisonment in a state~~  
20 ~~correctional facility for not less than three nor more than fifteen years.~~

21 (b) Notwithstanding the provisions of §62-12-2 of this code, any person sentenced  
22 pursuant to this section shall may not be eligible for probation.

23 (c) Notwithstanding the provisions of §62-11A-1a, §62-11B-4, and §62-12-2 of this code,  
24 a person sentenced under this section ~~shall~~ may not be eligible for home incarceration or an  
25 alternative sentence.

**§61-8B-10. Imposition of sexual acts on persons incarcerated or under supervision.**

1 (a) Any person employed by the Division of Corrections and Rehabilitation, any person  
2 working at a correctional facility managed by the Commissioner of Corrections and Rehabilitation  
3 pursuant to contract or as an employee of a state agency or as a volunteer or any person  
4 employed by, or acting pursuant to, the authority of any sheriff, county commission, or court to  
5 ensure compliance with the provisions of §62-11B-1 *et seq.* of this code who engages in sexual  
6 intercourse, sexual intrusion, or sexual contact with a person who is incarcerated in this state is  
7 guilty of a class 6 felony and, ~~upon conviction thereof, shall be fined not more than \$5,000 or~~  
8 ~~imprisoned in a state correctional facility for not less than one nor more than five years or both~~  
9 ~~fined and imprisoned.~~

10 (b) Any person employed by the Division of Corrections and Rehabilitation as a parole  
11 officer or by the West Virginia Supreme Court of Appeals as an adult or juvenile probation officer,  
12 who engages in sexual intercourse, sexual intrusion, or sexual contact with a person said parole  
13 officer or probation officer is charged as part of his or her employment with supervising, is guilty  
14 of a class 6 felony and, ~~upon conviction thereof, shall be fined not more than \$5,000 or imprisoned~~  
15 ~~in a state correctional facility for not less than one nor more than five years, or both fined and~~  
16 ~~imprisoned.~~

17 (c) Any person working or volunteering in an alternative sentence program authorized by  
18 the provisions of §62-11C-1, *et seq.* of this code who, as part of his or her employment or  
19 volunteer duties, supervises program participants, engages in sexual intercourse, sexual  
20 intrusion, or sexual contact with a program participant is guilty of a class 6 felony ~~and upon~~  
21 ~~conviction, shall be fined not more than \$5,000, imprisoned in a state correctional facility for not~~  
22 ~~less than one nor more than five years, or both fined and imprisoned.~~

23 (d) The term “incarcerated in this state” for purposes of this section includes in addition to  
24 its usual meaning, offenders serving a sentence under the provisions of article §62-11B-1 et seq.  
25 of this code.

26 (e) Authorized pat-down, strip search or other security related tasks do not constitute  
27 sexual contact pursuant to this section.

**§61-8B-12. Ignorance of victim incapacity to consent; ~~defense. Same~~ — Defense.**

1 (a) In any prosecution under this article in which the victim’s lack of consent is based solely  
2 on the incapacity to consent because such victim was below a critical age, mentally defective,  
3 mentally incapacitated or physically helpless, it is an affirmative defense that the defendant at the  
4 time he or she engaged in the conduct constituting the offense did not know of the facts or  
5 conditions responsible for such incapacity to consent, unless the defendant is reckless in failing  
6 to know such facts or conditions.

**§ 61-8B-18. Rule-making authority.**

1 [Repealed]

**ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.**

**§ 61-8C-1. Definitions.**

1 For the purposes of this article:

2 “Minor” means any child under eighteen years of age.

3 ~~“Knowledge~~ “Knowingly” means knowing or having reasonable cause to know which  
4 warrants further inspection or inquiry.

5 “Sexually explicit conduct” includes any of the following, whether actually performed  
6 or simulated:

7 (1) Genital to genital intercourse;

8 (2) Fellatio;

9 (3) Cunnilingus;

10 (4) Anal intercourse;

- 11 (5) Oral to anal intercourse;
- 12 (6) Bestiality;
- 13 (7) Masturbation;
- 14 (8) Sadomasochistic abuse, including, but not limited to, flagellation, torture or
- 15 bondage;
- 16 (9) Excretory functions in a sexual context; or
- 17 (10) Exhibition of the genitals, pubic or rectal areas of any person in a sexual
- 18 context.

19 "Person" means an individual, partnership, firm, association, corporation or other legal

20 entity.

21 "Coerces" means:

22 (1) The use or threat of force against, abduction of, serious harm to or physical restraint

23 of an individual;

24 (2) The use of a plan, pattern, or statement with intent to cause an individual to believe

25 that failure to perform an act will result in the use of force against, abduction of, serious harm to,

26 physical restraint of or deportation of an individual;

27 (3) The abuse or threatened abuse of law or legal process;

28 (4) The destruction or taking of, or the threatened destruction or taking of, an individual's

29 identification document or other property; or

30 (5) The use of an individual's physical or mental impairment when the impairment has a

31 substantial adverse effect on the individual's cognitive or volitional function.

32 (6) As used in this section, "coercion" does not include statements or actions made by a

33 duly authorized state or federal law-enforcement officer as part of a lawful law enforcement

34 investigation or undercover action.

35 "Visual portrayal" has the same meaning as defined at §61-8C-3b(b)(2) of this code;

**§61-8C-2. Use of minors in filming sexually explicit conduct prohibited; penalty.**

1 (a) Any person who causes or knowingly permits, uses, persuades, induces, entices, or  
2 coerces such minor to engage in or uses such minor to do or assist in any sexually explicit conduct  
3 ~~shall be~~ is guilty of a class 5 felony ~~when such person has knowledge that any such act is being~~  
4 ~~photographed or filmed. Upon conviction thereof, such person shall be fined not more than~~  
5 ~~\$10,000, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned.~~

6 (b) Any person who produces a visual portrayal, photographs, or films such minor  
7 engaging in any sexually explicit conduct ~~shall be~~ is guilty of a class 5 felony, ~~and, upon conviction~~  
8 ~~thereof, shall be fined not more than \$10,000, or imprisoned in the penitentiary not more than ten~~  
9 ~~years, or both fined and imprisoned.~~

10 (c) (1) Any parent, legal guardian or person having custody and control of a minor, who  
11 produces a visual portrayal, photographs, or films such minor in any sexually explicit conduct, or  
12 causes or knowingly permits, uses, persuades, induces, entices, or coerces such minor child to  
13 engage in or assist in any sexually explicit act ~~shall be~~ is guilty of a class 5 felony ~~when such~~  
14 ~~person has knowledge that any such act may be photographed or filmed. Upon conviction thereof,~~  
15 ~~such person shall be fined not more than \$10,000, or imprisoned in the penitentiary not more than~~  
16 ~~ten years, or both fined and imprisoned. one, article fourteen. Chapter sixty one.~~

17 (2) If any parent, legal guardian, person in a position of trust, or any person with  
18 knowledge, sends or causes to be sent, or distributes, exhibits, possesses, displays, or transports,  
19 any material visually portraying a child under his or her care, custody or control engaged in any  
20 sexually explicit conduct the sentence in this subsection the court may impose up to an additional  
21 two years of confinement.

**§61-8C-3. Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct prohibited; penalty.**

1 (a) Any person who, knowingly and willfully, sends or causes to be sent or distributes,  
2 exhibits, possesses, electronically accesses with intent to view, or displays or transports any  
3 material visually portraying a minor engaged in any sexually explicit conduct is guilty of a class 5

4 felony.

5 (b) Any person who violates the provisions of subsection (a) of this section when the  
6 conduct involves fifty or fewer images is guilty of a class 6 felony ~~shall, upon conviction, be~~  
7 ~~imprisoned in a state correctional facility for not more than two years or fined not more than \$2,000~~  
8 ~~or both.~~

9 (c) Any person who violates the provisions of subsection (a) of this section when the  
10 conduct involves more than 50 but fewer than 600 images is guilty if class 5 felony ~~shall, upon~~  
11 ~~conviction, be imprisoned in a state correctional facility for not less than two nor more than ten~~  
12 ~~years or fined not more than \$5,000, or both.~~

13 (d) Notwithstanding the provisions of subsections (b) and (c) of this section any person  
14 who violates the provisions of subsection (a) of this section when the conduct involves 600 or  
15 more images or depicts violence against a child or a child engaging in bestiality is guilty of a class  
16 3 felony ~~shall, upon conviction, be imprisoned in a state correctional facility for not less than five~~  
17 ~~nor more than fifteen years or fined not more than \$25,000, or both.~~

18 (e) For purposes of this section each video clip, movie or similar recording of five minutes  
19 or less shall constitute 75 images. A video clip, movie, or similar recording of a duration longer  
20 than five minutes shall be ~~deemed~~ considered to constitute 75 images for every two minutes in  
21 length it exceeds five minutes.

**§61-8C-3a. Prohibiting child erotica; penalties.**

1 (a) Any person age 18 or over who knowingly and intentionally produces, possesses,  
2 displays or distributes, in any form, any visual portrayals of minors who are partially clothed, where  
3 the visual portrayals are: (1) Unrelated to the sale of a commercially available legal product; and  
4 (2) used for purely prurient purposes, is guilty of a class 1 misdemeanor ~~and, upon conviction~~  
5 ~~thereof, shall be confined in jail for not more than one year or fined not more than \$1,000, or both~~  
6 ~~confined and fined.~~

7 (b) As used in this section only:

8 (1) "Purely prurient purposes" means for the specific purpose of sexual gratification or  
 9 sexual arousal from viewing the visual portrayals prohibited by this section; and

10 (2) "Commercially available" means for sale to the general public.

11 (3) A "minor" is a child under the age of 16 years, or a person who is 16 years of age or  
 12 older but less than 18 years old and who is mentally defective or mentally incapacitated.

**§61-8C-3b. Prohibiting juveniles from manufacturing, possessing, and distributing nude  
 or partially nude images of minors; creating exemptions; declaring a violation to be  
 an act of juvenile delinquency; and providing for the punishment thereof.**

1 (a) Any minor who intentionally possesses, creates, produces, distributes, presents,  
 2 transmits, posts, exchanges, or otherwise disseminates a visual portrayal of another minor posing  
 3 in an inappropriate sexual manner or who distributes, presents, transmits, posts, exchanges, or  
 4 otherwise disseminates a visual portrayal of himself or herself posing in an inappropriate sexual  
 5 manner is guilty of an act of delinquency and, upon adjudication, disposition may be made by the  
 6 circuit court pursuant to the provisions of §49-4-701 through §49-4-725 of this code.

7 (b) As used in this section:

8 "Posing in an inappropriate sexual manner" means exhibition of bare female breast,  
 9 female or male genitalia, pubic, or rectal areas of a minor for purposes of sexual titillation.

10 ~~(2) "Visual portrayal" means:~~

11 ~~(A.1) A photograph;~~

12 ~~(B.2) A motion picture;~~

13 ~~(C) A digital image;~~

14 ~~(D) A digital video recording; or~~

15 ~~(E) Any other mechanical or electronic recording process or device that can preserve, for~~  
 16 ~~later viewing, a visual image of a person that includes, but is not limited to, computers, cellphones,~~  
 17 ~~personal digital assistance, and other digital storage or transmitting devices;~~

18 "Visual portrayal" means: a reproducible image of a person by means of a visual depiction,

19 including but not limited to a photograph, motion picture, digital image, computer image, computer  
20 generated image, video tape, digital recording, digital video recording, undeveloped film or  
21 videotape, data stored on a computer, computer disk, cellphone, personal digital assistance,  
22 transmitting devices, or by electronic means which is capable of conversion into a visual image  
23 that has been transmitted by any means, whether or not stored in a permanent format, data which  
24 is capable of conversion into a visual image that has been transmitted by any means whether or  
25 not stored in a permanent format, or any other mechanical or electronic recording process or  
26 device that can preserve, for later viewing, a visual image of a person including, but not limited to  
27 computers, cellphones, personal digital assistance, and other digital storage or transmitting  
28 devices;

29 (c) It shall be an affirmative defense to an alleged violation of this section that a minor  
30 charged with possession of the prohibited visual depiction did neither solicit its receipt nor  
31 distribute, transmit, or present it to another person by any means.

32 (d) Notwithstanding the provisions of §15-12-1 et seq. of this code, an adjudication of  
33 delinquency under the provisions of this section ~~shall~~ may not subject the minor to the  
34 requirements of that article and chapter.

## **ARTICLE 8D. CHILD ABUSE.**

### **§ 61-8D-1. Definitions.**

1 In this article, unless a different meaning is plainly required:

2 “Abuse” means the infliction upon a minor child of physical injury by other than accidental  
3 means.

4 “Child” means any person under eighteen years of age not otherwise emancipated by law.

5 “Controlled substance” means controlled substance as that term is defined in §61A-1-  
6 101(d).of this code.

7 “Custodian” means a person over the age of fourteen years who has or shares actual  
8 physical possession or care and custody of a child on a full-time or temporary basis, regardless

9 of whether such person has been granted custody of the child by any contract, agreement, or  
10 legal proceeding. "Custodian" shall also include, but not be limited to, the spouse of a parent,  
11 guardian or custodian, or a person cohabiting with a parent, guardian, or custodian in the  
12 relationship of husband and wife, where such spouse or other person shares actual physical  
13 possession or care and custody of a child with the parent, guardian, or custodian.

14 "Guardian" means a person who has care and custody of a child as the result of any  
15 contract, agreement, or legal proceeding.

16 "Gross neglect" means reckless or intentional conduct, behavior or inaction by a parent,  
17 guardian or custodian that evidences a clear disregard for a minor child's health, safety, or  
18 welfare.

19 "Neglect" means the unreasonable failure by a parent, guardian, or custodian of a minor  
20 child to exercise a minimum degree of care to assure the minor child's physical safety or health.  
21 For purposes of this article, the following do not constitute "neglect" by a parent, guardian, or  
22 custodian:

23 (1) Permitting a minor child to participate in athletic activities or other similar activities that  
24 if done properly are not inherently dangerous, regardless of whether that participation creates a  
25 risk of bodily injury;

26 (2) Exercising discretion in choosing a lawful method of educating a minor child; or

27 (3) Exercising discretion in making decisions regarding the nutrition and medical care  
28 provided to a minor child based upon religious conviction or reasonable personal belief.

29 "Parent" means the biological father or mother of a child, or the foster or adoptive mother  
30 or father of a child, or a stepparent of a child or legal guardian.

31 "Sexual contact" means sexual contact as that term is defined in §61-8B-1. of this code.

32 "Sexual exploitation" means an act whereby:

33 (1) A parent, custodian, guardian, or other person in a position of trust to a child, whether  
34 for financial gain or not, persuades, induces, entices, or coerces the child to engage in sexually

35 explicit conduct as that term is defined in §61-8C-1. of this code; or

36 (2) A parent, guardian, custodian or other person in a position of trust in relation to a child  
 37 persuades, induces, entices or coerces the child to display his or her sex organs for the sexual  
 38 gratification of the parent, guardian, custodian, person in a position of trust or a third person, or  
 39 to display his or her sex organs under circumstances in which the parent, guardian, custodian or  
 40 other person in a position of trust knows such display is likely to be observed by others who would  
 41 be affronted or alarmed.

42 "Sexual intercourse" means sexual intercourse as that term is defined in §61-8B-1 of this  
 43 code.

44 "Sexual intrusion" means sexual intrusion as that term is defined in §61-8B-1-one of this  
 45 code.

46 A "person in a position of trust in relation to a child" refers to any person who is acting in  
 47 the place of a parent and charged with any of a parent's rights, duties or responsibilities  
 48 concerning a child or someone responsible for the general supervision of a child's welfare, or any  
 49 person who by virtue of their occupation or position is charged with any duty or responsibility for  
 50 the health, education, welfare, or supervision of the child.

**§ 61-8D-2. Murder of a child by a parent, guardian or custodian or other person by refusal  
 or failure to supply necessities, or by delivery, administration, or ingestion of a  
 controlled substance; tenets and practices of a recognized religious denomination  
 or order; penalties.**

1 (a) If any parent, guardian, or custodian shall maliciously and intentionally cause the death  
 2 of a child under his or her care, custody, or control by his or her failure or refusal to supply such  
 3 child with necessary food, clothing, shelter, or medical care, then such parent, guardian or  
 4 custodian ~~shall be~~ is guilty of a class 1 felony. ~~murder in the first degree.~~

5 (b) If any parent, guardian, or custodian ~~shall cause~~ causes the death of a child under his  
 6 or her care, custody, or control by knowingly allowing any other person to maliciously and

7 intentionally fail or refuse to supply such child with necessary food, clothing, shelter, or medical  
8 care, then such other person and such parent, guardian or custodian shall each be guilty of a  
9 class 1 felony. murder in the first degree.

10 (c) The penalty for offenses defined by this section shall be that which is prescribed for  
11 murder ~~in~~ of the first degree under the provisions of §61-2-1 of this code.

12 (d) The provisions of this section ~~shall~~ may not apply to any parent, guardian or custodian  
13 who fails or refuses, or allows another person to fail or refuse, to supply a child under the care,  
14 custody or control of such parent, guardian, or custodian with necessary medical care, when such  
15 medical care conflicts with the tenets and practices of a recognized religious denomination or  
16 order of which such parent, guardian or custodian is an adherent or member.

17 (e) Without in any manner excluding any other method of establishing a recognized  
18 method of religious healing, if the fees and expenses incurred in connection with treatment are  
19 deductible pursuant to the regulations or rules promulgated by the United States Internal Revenue  
20 Service, the treatment is presumed to constitute a recognized method of religious healing.

**§ 61-8D-2a. Death of a child by a parent, guardian or custodian or other person by child  
abuse; criminal penalties.**

1 (a) If any parent, guardian, or custodian maliciously and intentionally inflicts upon a child  
2 under his or her care, custody or control substantial physical pain, illness, or any impairment of  
3 physical condition by other than accidental means, thereby causing the death of such child, then  
4 such parent, guardian or custodian is guilty of a class 1 felony.

5 (b) If any parent, guardian, or custodian knowingly allows any other person to maliciously  
6 and intentionally inflict upon a child under the care, custody or control of ~~such~~ the parent, guardian  
7 or custodian substantial physical pain, illness or any impairment of physical condition by other  
8 than accidental means, which thereby causes the death of ~~such~~ the child, then such other person  
9 and ~~such~~ parent, guardian or custodian are each guilty of a class 1 felony.

10 (c) Any person convicted of a felony described in subsection (a) or (b) of this section ~~shall~~

11 ~~be imprisoned in a state correctional facility for a period of fifteen years to life. A person imprisoned~~  
12 ~~pursuant to the provisions of this section is not eligible for parole prior to having served a minimum~~  
13 ~~of 15 years of his or her sentence.~~

14 ,

**§61-8D-3. Child abuse resulting in injury; child abuse creating risk of injury; criminal penalties.**

1 (a) ~~If Any parent, guardian, or custodian who shall abuse abuses a child and by such the~~  
2 ~~abuse cause such causes the child bodily injury as such term is defined in §61-8B-1 of this code,~~  
3 ~~then such parent, guardian or custodian shall be is guilty of a class 6 felony and, upon conviction~~  
4 ~~thereof, shall be fined not less than \$100 nor more than \$1,000 and imprisoned in a state~~  
5 ~~correctional facility for not less than one nor more than five years, or in the discretion of the court,~~  
6 ~~be confined in jail for not more than one year.~~

7 (b) ~~If Any parent, guardian, or custodian who shall abuse abuses a child and by such the~~  
8 ~~abuse cause said causes the child serious bodily injury as such term is defined in §61-8B-1 of~~  
9 ~~this code, then such parent, guardian or custodian shall be is guilty of a class 5 felony and, upon~~  
10 ~~conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 and committed to the~~  
11 ~~custody of the Division of Corrections not less than two nor more than ten years.~~

12 (c) Any parent, guardian or custodian who abuses a child and by the abuse creates a  
13 substantial risk of death or serious bodily injury, as serious bodily injury is defined in §61-8B-1 of  
14 this code, to the child is guilty of a class 6 felony and, upon conviction thereof, shall be fined not  
15 more than \$3,000 or imprisoned in a state correctional facility for not less than one nor more than  
16 five years, or both.

17 (d)(1) If a parent, guardian or custodian who has not previously been convicted under this  
18 section, §61-8D-4 of this code, or a law of another state or the federal government with the same  
19 essential elements abuses a child and by the abuse creates a substantial risk of bodily injury, as  
20 bodily injury is defined in §61-8B-1 of this code, to the child is guilty of a class 2 misdemeanor

21 ~~and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined~~  
22 ~~in jail not more than six months, or both.~~

23 (2) For a second offense under this subsection or for a person with one prior conviction  
24 under this section, §61-8D-4 of this code, or a law of another state or the federal government with  
25 the same essential elements, the parent, guardian or custodian is guilty of a class 1 misdemeanor  
26 ~~and, upon conviction thereof, shall be fined not more than \$1,500 and confined in jail not less than~~  
27 ~~thirty days nor more than one year, or both.~~

28 (3) For a third or subsequent offense under this subsection or for a person with two or  
29 more prior convictions under this section, §61-8D-4 of this code, or a law of another state or the  
30 federal government with the same essential elements, the parent, guardian or custodian is guilty  
31 of a class 6 felony. ~~felony and, upon conviction thereof, shall be fined not more than \$3,000 and~~  
32 ~~imprisoned in a state correctional facility not less than one year nor more than three years, or~~  
33 ~~both.~~

34 (e) Any person convicted of a misdemeanor offense under this section:

35 (1) May be required to complete parenting classes, substance abuse counseling, anger  
36 management counseling, or other appropriate services, or any combination thereof, as  
37 determined by Department of Health and Human Resources, Bureau for Children and Families  
38 through its services assessment evaluation, which shall be submitted to the court of conviction  
39 upon written request;

40 (2) ~~Shall~~ May not be required to register pursuant to §15-13-1 *et seq.* of this code; and

41 (3) ~~Shall~~ May not, solely by virtue of the conviction, have their custody, visitation, or  
42 parental rights automatically restricted.

43 (f) Nothing in this section shall preclude a parent, guardian, or custodian from providing  
44 reasonable discipline to a child.

**§61-8D-3a. Female genital mutilation; penalties; definitions.**

1 (a) Except as otherwise provided in subsection (b) of this section, any person who

2 circumcises, excises or infibulates, in whole or in part, the labia majora, labia minora or clitoris of  
3 a female under the age of 18, or any parent, guardian or custodian of a female under the age of  
4 eighteen who allows the circumcision, excision or infibulation, in whole or in part, of such female's  
5 labia majora, labia minora or clitoris, ~~shall be~~ is guilty of a class 5 felony and, ~~upon conviction~~  
6 ~~thereof, shall be imprisoned in a state correctional facility for not less than two nor more than ten~~  
7 ~~years and fined not less than \$1,000 nor more than \$5,000.~~

8 (b) A surgical procedure is not a violation of this section if the procedure:

9 (1) Is necessary to preserve the health of the child on whom it is performed and is  
10 performed by a licensed medical professional authorized to practice medicine in this state; or

11 (2) The procedure is performed on a child who is in labor or has just given birth and is  
12 performed for legitimate medical purposes connected with that labor or birth by a licensed medical  
13 professional authorized to practice medicine in this state.

14 (c) A person's belief that the conduct described in subsection (a) of this section: (i) is  
15 required as a matter of custom, ritual or standard practice; or (ii) was consented to by the female  
16 on which the circumcision, excision or infibulation was performed ~~shall~~ may not constitute a  
17 defense to criminal prosecution under subsection (a) of this section.

**§61-8D-4. Child neglect resulting in injury; child neglect creating risk of injury; criminal penalties.**

1 (a) If a parent, guardian, or custodian neglects a child and by such neglect causes the  
2 child bodily injury, as bodily injury is defined in §61-8B-1 of this code, then the parent, guardian  
3 or custodian is guilty of a class 6 felony and, ~~upon conviction thereof, shall be fined not less than~~  
4 ~~\$100 nor more than \$1,000 dollars or imprisoned in a state correctional facility for not less than~~  
5 ~~one nor more than three years, or in the discretion of the court, be confined in jail for not more~~  
6 ~~than one year, or both.~~

7 (b) If a parent, guardian, or custodian neglects a child and by such neglect cause the child  
8 serious bodily injury, as serious bodily injury is defined in §61-8B-1 of this code, then the parent,

9 guardian or custodian is guilty of a class 5 felony and, upon conviction thereof, shall be fined not  
10 less than \$300 nor more than \$3,000 dollars or imprisoned in a state correctional facility for not  
11 less than one nor more than ten years, or both.

12 (c) If a parent, guardian, or custodian grossly neglects a child and by that gross neglect  
13 creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in  
14 §61-8B-1 of this code, of the child then the parent, guardian or custodian is guilty of a class 6  
15 felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000  
16 dollars or imprisoned in a state correctional facility for not less than one nor more than five years,  
17 or both.

18 (d)(1) If a parent, guardian, or custodian who has not been previously convicted under this  
19 section, §61-8D-3 of this code, or a law of another state or the federal government with the same  
20 essential elements neglects a child and by that neglect creates a substantial risk of bodily injury,  
21 as defined in §61-8B-1 of this code, to the child, then the parent, guardian or custodian, is guilty  
22 of a class 2 misdemeanor and, upon conviction thereof, for a first offense, shall be fined not less  
23 than \$100 nor more than \$1,000 or confined in jail not more than six months, or both fined and  
24 confined.

25 (2) For a second offense under this subsection or for a person with one prior conviction  
26 under this section, §61-8D-3 of this code, or a law of another state or the federal government with  
27 the same essential elements, the parent, guardian, or custodian is guilty of a class 1 misdemeanor  
28 and, upon conviction thereof, shall be fined not more than \$1,000 and confined in jail not less than  
29 thirty days nor more than one year, or both.

30 (3) For a third or subsequent offense under this subsection or for a person with two or  
31 more prior convictions under this section, §61-8D-3 of this code, or a law of another state or the  
32 federal government with the same essential elements, the parent, guardian, or custodian is guilty  
33 of a class 6 felony and, upon conviction thereof, shall be fined not more than \$2,000 and  
34 imprisoned in a state correctional facility not less than one year nor more than three years, or both

35 ~~fined and imprisoned.~~

36 (e) The provisions of this section ~~shall~~ may not apply if the neglect by the parent, guardian  
37 or custodian is due primarily to a lack of financial means on the part of such parent, guardian, or  
38 custodian.

39 (f) Any person convicted of a misdemeanor offense under this section:

40 (1) May be required to complete parenting classes, substance abuse counseling, anger  
41 management counseling, or other appropriate services, or any combination thereof, as  
42 determined by Department of Health and Human Resources, Bureau for Children and Families  
43 through its services assessment evaluation, which shall be submitted to the court of conviction  
44 upon written request;

45 (2) ~~Shall~~ May not be required to register pursuant to the requirements of §15-13-1, *et seq.*  
46 of this code; and

47 (3) ~~Shall~~ May not, solely by virtue of the conviction, have their custody, visitation or  
48 parental rights automatically restricted.

**§ 61-8D-4a. Child neglect resulting in death; medical treatment; recognized method of religious healing; criminal penalties.**

1 (a) ~~If Any parent, guardian, or custodian shall neglect~~ who neglects a child under his or  
2 her care, custody, or control and by such neglect cause the death of said child, then such parent,  
3 guardian or custodian ~~shall be~~ is guilty of a class 4 felony and, upon conviction thereof, ~~shall be~~  
4 ~~fined not less than \$1,000 nor more than \$5,000 or committed to the custody of the Division of~~  
5 ~~Corrections for not less than three nor more than fifteen years, or both such fine and~~  
6 ~~imprisonment.~~

7 (b) No child who in lieu of medical treatment was under treatment solely by spiritual means  
8 through prayer in accordance with a recognized method of religious healing with a reasonable  
9 proven record of success ~~shall~~ may, for that reason alone, be considered to have been neglected  
10 within the provisions of this section. Without in any manner excluding any other method of

11 establishing a recognized method of religious healing, if the fees and expenses incurred in  
12 connection with treatment are deductible pursuant to the regulations or rules promulgated by the  
13 United States Internal Revenue Service, such treatment shall be presumed to constitute a  
14 recognized method of religious healing. A method of religious healing shall be presumed to be a  
15 recognized method of religious healing if fees and expenses incurred in connection with such  
16 treatment are permitted to be deducted from taxable income as "medical expenses" pursuant to  
17 regulations or rules promulgated by the United States Internal Revenue Service.

18 (c) A child whose parent, guardian or legal custodian has inhibited or interfered with the  
19 provision of medical treatment in accordance with a court order may be considered to have been  
20 neglected for the purposes of this section.

**§ 61-8D-5. Sexual abuse by a parent, guardian, custodian or person in a position of trust  
to a child; parent, guardian, custodian or person in a position of trust allowing  
sexual abuse to be inflicted upon a child; displaying of sex organs by a parent,  
guardian, or custodian; penalties.**

1 (a) In addition to any other offenses set forth in this code, the Legislature hereby declares  
2 a separate and distinct offense under this subsection, as follows: If any parent, guardian or  
3 custodian of or other person in a position of trust in relation to a child under his or her care, custody  
4 or control, shall engage in or attempt to engage in sexual exploitation of, or in sexual intercourse,  
5 sexual intrusion or sexual contact with, a child under his or her care, custody or control,  
6 notwithstanding the fact that the child may have willingly participated in such conduct, or the fact  
7 that the child may have consented to such conduct or the fact that the child may have suffered no  
8 apparent physical injury or mental or emotional injury as a result of such conduct, then such  
9 parent, guardian, custodian or person in a position of trust ~~shall be~~ is guilty of a class 3 felony  
10 ~~and, upon conviction thereof, shall be imprisoned in a correctional facility not less than ten nor~~  
11 ~~more than twenty years, or fined not less than \$500 nor more than \$5,000 and imprisoned in a~~  
12 ~~correctional facility not less than ten years nor more than twenty years.~~

13 (b) Any parent, guardian, custodian or other person in a position of trust in relation to the  
14 child who knowingly procures, authorizes, or induces another person to engage in or attempt to  
15 engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a  
16 child under the care, custody or control of such parent, guardian, custodian or person in a position  
17 of trust when such child is less than 16 years of age, notwithstanding the fact that the child may  
18 have willingly participated in such conduct or the fact that the child may have suffered no apparent  
19 physical injury or mental or emotional injury as a result of such conduct, such parent, guardian,  
20 custodian or person in a position of trust ~~shall be guilty of a class 4 felony and, upon conviction~~  
21 ~~thereof, shall be imprisoned in a correctional facility not less than five years nor more than fifteen~~  
22 ~~years, or fined not less than \$1,000 nor more than \$10,000 and imprisoned in a correctional facility~~  
23 ~~not less than five years nor more than fifteen years.~~

24 (c) (1) Any parent, guardian, custodian or other person in a position of trust in relation to  
25 the child who knowingly procures, authorizes, or induces another person to engage in or attempt  
26 to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with,  
27 a child under the care, custody or control of such parent, guardian, custodian or person in a  
28 position of trust when such child is 16 years of age or older, notwithstanding the fact that the child  
29 may have consented to such conduct or the fact that the child may have suffered no apparent  
30 physical injury or mental or emotional injury as a result of such conduct, then such parent,  
31 guardian, custodian or person in a position of trust ~~shall be guilty of a class 6 felony and, upon~~  
32 ~~conviction thereof, shall be imprisoned in a correctional facility not less than one year nor more~~  
33 ~~than five years.~~

34 (2) If any parent, legal guardian, person in a position of trust, or any person with  
35 knowledge, sends or causes to be sent, or distributes, exhibits, possesses, displays, or transports,  
36 any material visually portraying a child under his or her care, custody or control engaged in any  
37 sexually explicit conduct the court may impose up to an additional two years of confinement to a  
38 sentence under this subsection.

39 (d) The provisions of this section ~~shall~~ may not apply to a custodian or person in a position  
40 of trust whose age exceeds the age of the child by less than four years.

**§ 61-8D-5a. Verbal abuse of noncommunicative child; penalties.**

1 (a) Any person, 18 years of age or older, who has supervisory responsibility over a  
2 noncommunicative minor child, who repeatedly engages in verbal conduct toward the child in an  
3 insulting, demeaning or threatening manner, is guilty of a class 2 misdemeanor ~~and, upon~~  
4 ~~conviction thereof, shall be fined not less than \$500 nor more than \$2,500 or confined in jail not~~  
5 ~~more than six months, or both fined and confined.~~

6 (b) As used in section (a) of this section:

7 “Noncommunicative child” means a child who, due to physical or developmental  
8 disabilities is unable to communicate verbally, in writing, or through a recognized sign language;

9 “Repeatedly” means on two or more occasions;

10 “Supervisory responsibility” means any situation where an adult has direct supervisory  
11 decision-making, oversight, instructive, academic, evaluative, or advisory responsibilities  
12 regarding the child. Supervisory responsibility can occur in a residence, in or out of a school  
13 setting, institutional setting, and in curricular, co-curricular, or extra-curricular settings.

**§ 61-8D-6. Sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian or custodian, depicting a child engaged in sexually explicit conduct; penalty.**

1 [Repealed]

**§ 61-8D-7. Presentation of false information regarding child’s injuries; penalty.**

1 Any person who knowingly presents false information concerning acts or conduct which  
2 would constitute an offense under the provisions of this article to attending medical personnel  
3 ~~shall be is~~ guilty of a class 1 misdemeanor, ~~and, upon conviction thereof, shall be fined not less~~  
4 ~~than \$100 nor more than \$1,000, and shall be confined in the county jail not more than one year.~~

**§ 61-8D-8. Spousal testimony; spousal privilege. ~~Testimony of husband and wife.~~**

1 Husband and wife are competent witnesses in any proceeding under this article and  
2 ~~cannot~~ may not refuse to testify on the grounds of their marital relationship or the privileged nature  
3 of their communications.

**§61-8D-10. Contributing to delinquency of a child; penalties; payment of medical costs;  
proof; court discretion; other payments; suspended sentence; maintenance and  
care; temporary custody.**

1 (a) Any person 18 years of age or older who knowingly contributes to or encourages the  
2 delinquency of a child is guilty of a class 1 misdemeanor ~~and, upon conviction thereof, shall be~~  
3 ~~fined not less than \$50 nor more than \$500 or confined for a period not exceeding one year or~~  
4 ~~both.~~

5 (b) As used in this section, "delinquency" means the violation or attempted violation of any  
6 federal or state statute, county or municipal ordinance, or a court order, or the habitual or continual  
7 refusal to comply, without just cause, with the lawful supervision or direction of a parent, guardian,  
8 or custodian.

9 (c) In addition to any penalty provided under this section and any restitution which may be  
10 ordered by the court pursuant to §61-11A-5 of this code, the court may order any person convicted  
11 of a violation of subsection (a) of this section to pay all or any portion of the cost of medical,  
12 psychological, or psychiatric treatment provided the child resulting from the acts for which the  
13 person is convicted.

14 (d) This section does not apply to any parent, guardian or custodian who fails or refuses,  
15 or allows another person to fail or refuse, to supply a child under the care, custody, or control of  
16 the parent, guardian, or custodian with necessary medical care, when medical care conflicts with  
17 the tenets and practices of a recognized religious denomination or order of which parent, guardian  
18 or custodian is an adherent or member.

19 (e) It is not an essential element of the offense created by this section that the minor  
20 actually be delinquent.

21 (f) Upon conviction, the court may suspend the sentence of a person found guilty under  
22 this section. A suspended sentence may be subjected to the following terms and conditions:

23 (1) That offender pay for ~~any and~~ all treatment, support, and maintenance while the child  
24 is in the custody of the state or person that the court determines reasonable and necessary for  
25 the welfare of the child; and,

26 ~~(2) That the offender post a sufficient bond to secure the payment for all sums ordered to~~  
27 ~~be paid under this section, as long as the bond does not exceed \$5,000; and~~

28 (2) That the offender participate in any program or training that will assist the child in  
29 correcting the delinquent behavior or, in the case of neglect, that will assist the offender in  
30 correcting his or her behavior that led to violation of this section.

31 ~~(g)(1) The penalty of a bond given upon suspension of a sentence which becomes~~  
32 ~~forfeited is recoverable without a separate suit. The court may cause a citation or a summons to~~  
33 ~~issue to the principal and surety, requiring that they appear at a time named by the court, not less~~  
34 ~~than ten days, from the issuance of the summons, and show cause why a judgment should not~~  
35 ~~be entered for the penalty of the bond and execution issued against the property of the principal~~  
36 ~~and the surety.~~

37 ~~(2) Any money collected or paid upon an execution, or upon the bond, shall be deposited~~  
38 ~~with the clerk of the court in which the bond was given. The money shall be applied first to the~~  
39 ~~payment of all court costs and then to the treatment, care, or maintenance of the child who was~~  
40 ~~at issue when the offender was convicted of this section.~~

41 ~~(h)~~ (g) If the guilty person had custody of the child prior to conviction, the court or judge  
42 may, on suspending sentence, permit the child to remain in the custody of the person, and make  
43 it a condition of suspending sentence that the person provides whatever treatment and care may  
44 be required for the welfare of the child, and shall do whatever may be calculated to secure  
45 obedience to the law or to remove the cause of the delinquency.

## **ARTICLE 8E. DISPLAY OF VIDEO RATINGS OR LACK THEREOF.**

**§61-8E-1. Legislative purpose.**

1 [Repealed]

**§61-8E-2. Definitions.**

1 [Repealed]

**§61-8E-3. Labeling of video movies designated for sale or rental; penalties**

1 [Repealed]

**ARTICLE 9 EQUITABLE REMEDIES IN AID OF CHASTITY, MORALITY AND  
DECENCY; NUISANCE.**

**§61-9-1. Definition of terms.**

1 For the purposes of this article the following terms—“place,” “person,” “nuisance”—are  
2 defined as follows:.” Place shall include any building, structure, erection or place, or any separate  
3 part or portion thereof, or the ground itself; “person” shall include any individual, corporation,  
4 association, partnership, trustee, lessee, agent or assignee; “nuisance” shall mean any place as  
5 above defined in or upon which lewdness, assignation, or prostitution is conducted, permitted,  
6 continued or exists, and the personal property and contents used in conducting or maintaining  
7 any such place for any such purpose.

8 “Place” means any building, structure, premises, erection, or any separate part or portion  
9 thereof, including the ground itself, all fixtures, personal property and contents used in conducting  
10 or in any way maintaining such place;

11 “Person” means any individual, corporation, association, partnership, trustee, lessee,  
12 agent, or assignee; and,

13 “Nuisance” means any place used by, or kept for the purpose of :

14 (1) Delivery, possession, manufacture, or use of a controlled substance prohibited by §  
15 60A -4-401, et seq. of this code;

16 (2) Gambling, gambling promotion, or communicating gambling information as prohibited  
17 by § 61-10-1 to §61-10-11b of this code;

18 (3) Preparation, distribution, or exhibition of obscene matter to minors prohibited by § 61-  
 19 8A-1 to § 61-8A-5 of this code;

20 (4) Committing a “qualifying offense” during an “organized criminal enterprise”, as defined,  
 21 and prohibited by §61-13-1 to §61-13- 6 of this code;

22 (5) Prostitution, as defined and prohibited in § 61-8-5 to§ 61-8- 8 of this code.

23 A person “maintains a nuisance” if that place is where:

24 (1) Acts listed in § 61-9-1(c) of this code are committed;

25 (2) The person is aware of those acts; and,

26 (3) The person fails to make reasonable efforts to abate those acts.

### **§61-9-2. Maintenance of nuisance**

1 ~~Any person who shall use, occupy, establish or conduct a nuisance as defined in section~~  
 2 ~~one, or aid or abet therein, and the owner, agent, or lessee of any interest in any such nuisance,~~  
 3 ~~together with the person employed in or in control of any such nuisance, by any such owner,~~  
 4 ~~agent, or lessee, shall be guilty of maintaining a nuisance and shall be enjoined as hereinafter~~  
 5 ~~provided.~~

6 (a) The following are guilty of maintaining a nuisance as defined in § 61-9-1 of this code  
 7 and may be enjoined as provided in § 61-9-3 of this code:

8 (1) Any person who uses, occupies, establishes, conducts, or assists in the nuisance;

9 (2) The owner, agent, or lessee of any interest in the place or the purpose of the nuisance;

10 (3) Any person in control of the nuisance , or

11 (4) Any person employed by any owner, agent, or lessee of any interest in the place or  
 12 the purpose of the nuisance.

13 (b) For purposes of this article, the grantee or vendee of the last recorded deed or contract  
 14 that describes the place, or any part of the place, where a nuisance exists is considered the owner  
 15 of the premises.

### **§61-9-3. Suit to abate and enjoin a nuisance; by whom instituted.**

1 ~~Whenever a nuisance exists, the Attorney General of the state, the prosecuting attorney~~  
 2 ~~of the county wherein the same exists, or any person who is a citizen, resident or taxpayer of the~~  
 3 ~~county, may bring suit in equity in the name of the State of West Virginia, upon the relation of~~  
 4 ~~such Attorney General, prosecuting attorney, or any person, to abate such nuisance and to~~  
 5 ~~perpetually enjoin the person or persons maintaining the same from further maintenance thereof.~~

6 (a) The following individuals have standing to bring an action to abate the nuisance and  
 7 perpetually enjoin the person or persons from further maintaining any such nuisance:

8 (1) The Attorney General;

9 (2) The prosecuting attorney of the county where the place is located;

10 (3) A commissioner of the county where the place is located; or,

11 (4) Any person who is a citizen, resident or taxpayer of the county where the place is  
 12 located.

13 (b) Any injunction granted under this section is binding on the defendant throughout the  
 14 State of West Virginia.

**§61-9-4. Venue; procedure; temporary injunction; order closing place; redemption;  
 vacation of orders; bond.**

1 ~~Such suit shall be brought in the circuit court of the county in which the property is located,~~  
 2 ~~or in any other court of the county having equity jurisdiction. The bill of complaint and other~~  
 3 ~~pleadings, and all proceedings in the case, shall conform to the law of the state with respect to~~  
 4 ~~equity procedure and to the rules and principles governing courts of equity, except so far as~~  
 5 ~~otherwise herein provided.~~

6 ~~At the time of the commencement of the suit, or at any time during the pendency thereof,~~  
 7 ~~the plaintiff or his attorney may file in the office of the clerk of the county court of the county in~~  
 8 ~~which such property is located a memorandum or notice setting forth the title of the case, the court~~  
 9 ~~in which it is pending, the general object of the suit, a brief description of the property to be affected~~  
 10 ~~thereby, and the name of the person or persons whose estate is intended to be affected by such~~

11 ~~suit. Such notice shall immediately be recorded by the clerk of the county court in the deed book,~~  
12 ~~and he shall index the same in the name of all the parties whose interest in such property is to be~~  
13 ~~affected; and such notice shall, from and after its recordation, be notice to all purchasers of such~~  
14 ~~property of the pendency of such suit.~~

15 ~~Upon the application for an injunction in such suit, the court or judge may, in his discretion,~~  
16 ~~enjoin the defendants and all other persons from removing or in any manner interfering with the~~  
17 ~~personal property and contents of the place where such nuisance is alleged to exist, until the final~~  
18 ~~decision of the case. A copy of such injunction order may be posted in a conspicuous place upon~~  
19 ~~the premises proceeded against, and any person thereafter removing or interfering with such~~  
20 ~~property shall be guilty of a violation of such injunction, and any person removing or mutilating~~  
21 ~~such copy of the order so posted, while the same remains in force, shall be guilty of contempt of~~  
22 ~~court, provided such posted notice or order contains thereon or therein a notice to that effect. The~~  
23 ~~officer serving such injunction order shall forthwith make and return into court an inventory of the~~  
24 ~~personal property and contents situated in the building or place proceeded against and used in~~  
25 ~~conducting or maintaining such nuisance.~~

26 ~~If, at the time of granting a temporary injunction, the same shall appear proper, the court~~  
27 ~~or judge granting the same may order the place proceeded against to be closed and not used for~~  
28 ~~any purpose until the final decision of the case: Provided, however, That the owner of any property~~  
29 ~~so closed or restrained may appear at any time before final hearing and decision, and upon~~  
30 ~~payment of all the costs incurred, and upon the filing of a bond, with sureties to be approved by~~  
31 ~~the clerk, in the amount of the full value of the property, to be ascertained by the court or judge,~~  
32 ~~conditioned that such owner will immediately abate the nuisance and prevent the same from being~~  
33 ~~established or kept until final decision of the case, then and in that case the court or judge, if~~  
34 ~~satisfied of the good faith of the owner of the real or personal property and of his innocence of~~  
35 ~~any knowledge of the use of such property as a nuisance, and that with reasonable care and~~  
36 ~~diligence such owner could not have known thereof, may deliver such property to the owner~~

37 ~~thereof and vacate any order theretofore made for the closing of such real property, or restraining~~  
38 ~~the removal or interference with such personal property. The release of any real or personal~~  
39 ~~property under the provisions of this section, however, shall not release it from any judgment, lien,~~  
40 ~~penalty or liability to which it may be subject by law.~~

41 (a) Any suit to enjoin shall be brought in the circuit court of the county where the place is  
42 located.

43 (b) At the time of the commencement of the suit, or at any time during the pendency  
44 thereof, the plaintiff or his attorney may file notice of lis pendens in accordance with § 55-11-1, et  
45 seq. of this code.

46 (c) In an action under this article:

47 (1) Evidence of the general reputation of the place, is admissible for the purpose of proving  
48 the existence of the nuisance;

49 (2) Proof of knowledge of the existence of the nuisance on the part of one or more of the  
50 defendants is not required;

51 (3) It is not necessary for the court to find the place involved was being used as and for a  
52 nuisance at the time of the hearing, or for the plaintiff to prove that the nuisance was continuing  
53 at the time the complaint was filed, if the complaint is filed within 90 days after any act, any  
54 violation, or the existence of a condition described in §61-9-1(c) of this code, as a nuisance.

55 (d) The court may enjoin the defendants and all other persons from removing or in any  
56 manner interfering with the personal property and contents of the place until the final decision of  
57 the case. A copy of the injunction order may be posted in a conspicuous location at the place.  
58 Anyone who removes or mutilates a copy of the posted injunction order is guilty of contempt, if  
59 the posted order contains notice to that effect. Any person thereafter removing or interfering with  
60 the place or any property therein, is guilty of a violation of the injunction.

61 (e) The officer serving such injunction order shall immediately make and return to the court  
62 an inventory of the personal property and contents situated in the place proceeded against and

63 used in conducting or maintaining such nuisance.

64 (f) Any time before final decision the court may order a temporary injunction, to close the  
65 place for any use: *Provided* That until the final decision of the court, the owner of the place may  
66 appear at any time to redeem and recover the property after compliance with the following:

67 (1) Full payment of all related costs incurred;

68 (2) Filing a bond, with appropriate sureties in the amount of the full value of the property  
69 ascertained by the court or judge, and,

70 (3) Sworn written assurances that the owner will immediately abate the nuisance and  
71 prevent the same from being established again.

72 (g) If the court is satisfied of (1) the good faith of the place's owner; (2) the owner's  
73 innocence of any knowledge of the use of the place as a nuisance; and, (3) that with reasonable  
74 care and diligence the owner could not have known or ascertained the use of the place as a  
75 nuisance, the court may deliver the place to the owner and vacate any order to close the place or  
76 restrict, remove or interfere with personal property.

77 (h) The release of any real or personal property under the provisions of this section,  
78 however, may not release the owner from any judgment, lien, penalty, or liability to which it may  
79 otherwise be subject by law.

**§61-9-5. Prima facie evidence of nuisance; prosecution of complaint; dismissal; costs;  
permanent injunction.**

1 ~~In such suit evidence of the general reputation of the place, or an admission or finding of~~  
2 ~~guilt of any person under the criminal laws against prostitution, lewdness or assignation at any~~  
3 ~~such place, shall be admissible for the purpose of proving the existence of such nuisance, and~~  
4 ~~shall be prima facie evidence of such nuisance and of knowledge thereof and acquiescence and~~  
5 ~~participation therein on the part of the person or persons charged with maintaining such nuisance~~  
6 ~~as herein defined. If the complaint is filed by a person who is a citizen, resident or taxpayer of the~~  
7 ~~county, it shall not be dismissed except upon a sworn statement by the complainant and his or its~~

8 ~~attorney, setting forth the reasons why the action should be dismissed and the dismissal approved~~  
9 ~~by the prosecuting attorney in writing or in open court. If the court or judge is of opinion that the~~  
10 ~~action ought not to be dismissed, he may direct the prosecuting attorney to prosecute such action~~  
11 ~~to judgment at the expense of the county, and if any such action is continued more than one term~~  
12 ~~of court, any person who is a citizen, resident or taxpayer of the county, or the Attorney General,~~  
13 ~~or the prosecuting attorney, may be substituted for the complainant and prosecute such suit to~~  
14 ~~final decree. If the suit is brought by any person who is a citizen, resident or taxpayer of the county~~  
15 ~~and the court finds and enters of record in the case that there were no reasonable grounds or~~  
16 ~~cause for such suit, the costs may be taxed to such person. If the existence of the nuisance be~~  
17 ~~established upon the trial, a decree shall be entered which shall perpetually enjoin the defendants~~  
18 ~~and any other person or persons from further maintaining the nuisance at the place complained~~  
19 ~~of and the defendants from maintaining such nuisance elsewhere within the county.~~

20 (a) Evidence of the general reputation of the place, or an admission or finding of guilt of  
21 any person for offenses identified in § 61-9-1(c) of this code, are admissible prima facie to prove  
22 knowledge, acquiescence, and participation in the nuisance.

23 (b) If the complaint is filed by a citizen, resident or taxpayer of the county, it may not be  
24 dismissed except upon a filed sworn statement by the complainant and his or its attorney, setting  
25 forth the satisfactory reasons why the action should be dismissed. Any dismissal shall be  
26 approved by the prosecuting attorney, either in writing, or in open court.

27 (c) If the court determines the action may not be dismissed, he may direct the prosecuting  
28 attorney to prosecute such action to judgment at the expense of the county.

29 (d) If the court finds no reasonable grounds or cause for the suit, costs may be awarded  
30 to the prevailing party.

31 (e) If the existence of the nuisance is established in an action under this article the court  
32 shall enter an order to:

33 (1) Permanently enjoin the defendants and any other person or persons from further

34 maintaining the nuisance at the place; and,

35 (2) Permanently enjoin the defendants from maintaining any nuisance elsewhere within  
36 the court's jurisdiction.

**§61-9-6. Order of abatement; sale of personal property; renewal of bond or continuance of closing order; release of property; breaking in or entering closed property; sheriff's fees.**

1 ~~If the existence of such nuisance be admitted or established in a suit as provided in this~~  
2 ~~article, an order of abatement shall be entered as part of the decree in the case, which order shall~~  
3 ~~direct the removal from the place of all personal property and contents used in conducting the~~  
4 ~~nuisance, and not already released by and under the authority of the court as provided in section~~  
5 ~~four of this article, and shall direct the sale of such thereof as belongs to the defendants notified~~  
6 ~~or appearing in the manner provided for the sale of personal property under execution. Such order~~  
7 ~~shall also require the renewal for one year of any bond furnished by the owner of the real property~~  
8 ~~as provided in section four, or, if not so furnished, shall continue for one year any closing order~~  
9 ~~issued at the time of granting the temporary injunction, or, if no such closing order was then~~  
10 ~~issued, shall include an order directing the effectual closing of the place against its use for any~~  
11 ~~purpose, and so keeping it closed for a period of one year unless sooner released: Provided,~~  
12 ~~however, That the owner of any place so closed and not released under bond as hereinbefore~~  
13 ~~provided may then or thereafter appear and obtain such release in the manner and upon fulfilling~~  
14 ~~the requirements as hereinbefore provided. The release of the property under the provisions of~~  
15 ~~this section shall not release it from any judgment, lien, penalty, or liability, to which it may be~~  
16 ~~subject by law. Owners of unsold personal property and contents so seized shall appear and~~  
17 ~~claim the same within ten days after such order of abatement is made, and if it has not been~~  
18 ~~proved to the satisfaction of the court that such owner had knowledge of such use thereof, or, that~~  
19 ~~with reasonable care and diligence, he could not have known thereof, such unsold personal~~  
20 ~~property and contents shall be delivered to the owner, otherwise it shall be sold as hereinbefore~~

21 ~~provided. If any person shall break and enter or use any place so directed to be closed, he shall~~  
22 ~~be punished as for contempt as provided hereinafter, in addition to any other penalties imposed~~  
23 ~~by law. For removing and selling personal property and contents, the sheriff shall be entitled to~~  
24 ~~charge and receive the same fees as he would for levying upon and selling like property on~~  
25 ~~execution; and for closing the place and keeping it closed, a reasonable sum shall be allowed by~~  
26 ~~the court.~~

27 (a) If the existence of the nuisance is established in an action under this article, the court  
28 shall, in addition to the terms of §61-9-5(e) of this code, enter an order of abatement as a part of  
29 the judgment in the action. The order of abatement may order any or all of the following:

30 (1) The removal from the building or place of all furniture, fixtures, and contents;

31 (2) The sale of the furniture, fixtures, and contents in the manner provided for the sale of  
32 goods under execution;

33 (3) The effectual closing of the building or place for any purpose, and so keeping it closed  
34 for a period of one year, unless sooner released as provided in this article;

35 (4) Execution of a bond or renewal of any bond ordered under §61-9-4 of this code; and,

36 (5) Any other equitable relief the court considers necessary.

37 (b) Any vehicle, boat, or aircraft found by the court to be a nuisance under this article is  
38 subject to the same order and judgment as any furniture, fixtures, and contents under subsection  
39 (1) of this section.

**§61-9-6a. Removal and sale of property; fees; loss of property exemptions; liability of officers.**

1 (a) For removing and selling the movable property, the sheriff is entitled to charge and  
2 receive the same fees as he would for levying upon and selling like property upon execution.

3 (b) For closing the building or place and keeping it closed, a reasonable sum shall be  
4 allowed the sheriff by the court.

5 (c) Any officer taking and disposing of any property of the defendant or defendants by

6 virtue of court order or judgment is not liable either civilly or criminally therefor, if a proper  
7 accounting for such property is made to the court within 10 days after the order or judgment is  
8 executed.

**61-9-7. Nuisance disclosed in criminal proceedings; proceeds from sale of personal property.**

1 ~~In case the existence of such nuisance is established in a criminal proceeding in a court~~  
2 ~~not having equitable jurisdiction, it shall be the duty of the prosecuting attorney to proceed~~  
3 ~~promptly under this article to enforce the provisions and penalties thereof, and the finding of the~~  
4 ~~defendant guilty in such criminal proceedings of any offense herein declared to be a nuisance,~~  
5 ~~unless reversed or set aside, shall be conclusive as against such defendant as to the existence~~  
6 ~~of the nuisance. The proceeds of the sale of the personal property, as provided in the preceding~~  
7 ~~section of this article, shall be applied in payment of the costs of the suit and abatement, including~~  
8 ~~the complainant's costs, or so much of the proceeds as may be necessary, except as hereinafter~~  
9 ~~provided.~~

10 (a) A guilty finding for any offense declared to be a nuisance, unless reversed or set aside,  
11 is conclusive evidence of the existence of the nuisance. Where the existence of a nuisance is  
12 established the prosecuting attorney shall, as appropriate, proceed promptly to enforce the  
13 provisions and penalties of this article.

14 (b) Unless the court provides otherwise the sale of any personal property, including but  
15 not limited to, furniture, fixtures, contents, vehicle, boat, or aircraft as provided in this section, the  
16 officer executing the order of the court shall:

17 (1) Deduct the expenses of keeping the property and the costs of the sale;

18 (2) Pay all secured interests and liens according to their priorities as established at court  
19 hearing or in other proceedings addressing the rights of a bona fide secured party or lien holder  
20 who did not have knowledge or notice that the property was being used or was to be used for the  
21 maintenance of a nuisance;

22 (3) Pay any other costs incurred in the prosecution of the action, including reasonable  
 23 attorney fees for necessary services as determined by the court. Any remaining balance shall be  
 24 paid to the persons entitled to them as ordered by the court or, if applicable, under §61-9-6 of this  
 25 code.

26 (4) Unsold personal property and contents may be delivered to the owner at the court's  
 27 discretion.

**§61-9-8. Violation of injunction or closing order; trial; penalty.**

1 ~~In case of the violation of any injunction or closing order granted under the provisions of~~  
 2 ~~this article, or the commission of any contempt of court in proceedings under this article, the court,~~  
 3 ~~or a judge thereof in vacation, may summarily try and punish the offender. The proceedings shall~~  
 4 ~~conform to the practice in other suits in equity for violations of injunctions, and proceedings for~~  
 5 ~~contempt of court. The trial may be had upon affidavits, or either party may demand the production~~  
 6 ~~and oral examination of the witnesses. A party found guilty of contempt under the provisions of~~  
 7 ~~this article shall be punished by a fine of not less than \$100 nor more than \$1,000, or by~~  
 8 ~~imprisonment in the county jail not more than six months, or by both such fine and imprisonment.~~

9 If any person violates any injunction or order granted under the provisions of this article or  
 10 commits any contempt of court in proceedings under this article, the court may try and punish the  
 11 offender for contempt. Any person found guilty of contempt under the provisions of this article is  
 12 guilty of a Class 2 misdemeanor.

**§61-9-9. Permanent injunction; tax imposed on property.**

1 [Repealed]

**§61-9-10. Notice to collect tax.**

1 [Repealed]

**§61-9-11. Effect of holding any part of article unconstitutional.**

1 [Repealed]

**ARTICLE 10 CRIMES AGAINST PUBLIC POLICY; GAMING AND GAMBLING.**

**~~§61-10-1. Keeping or exhibiting gaming table, machine, or device; penalty; seizure of table, machine, or device; forfeiture of money used in such gaming. Definitions.~~**

1 Any person who shall keep or exhibit a gaming table, commonly called A.B.C. or E.O.  
2 table, or faro bank, or keno table, or any slot machine, multiple coin console machine, multiple  
3 coin console slot machine or device in the nature of a slot machine, or any other gaming table or  
4 device of like kind, under any denomination, or which has no name, whether the game, table,  
5 bank, machine or device be played with cards, dice or otherwise, or shall be a partner, or  
6 concerned in interest, in keeping or exhibiting such table, bank, machine or gaming device of any  
7 character, shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less  
8 than two nor more than twelve months and be fined not less than \$100 nor more than \$1,000.  
9 Any such table, faro bank, machine or gaming device, and all money staked or exhibited to allure  
10 persons to bet at such table, or upon such gaming device, may be seized by order of a court, or  
11 under the warrant of a justice, and the money so seized shall be forfeited to the county and paid  
12 into the treasury of the county in which such seizure is made, and the table, faro bank, machine  
13 or gaming device shall be completely destroyed: Provided, however, That the provisions of this  
14 section shall not extend to coin-operated nonpayout machines with free play feature or to  
15 automatic weighing, measuring, musical and vending machines which are so constructed as to  
16 give a certain uniform and fair return in value or services for each coin deposited therein and in  
17 which there is no element of chance.

18 For purposes of this article the following terms mean:

19 “Wager” is a sum of money, or other thing of value or consideration risked on an uncertain  
20 event; a bet, or gamble.

21 (1) A wager does not include:

22 (A) Any charity game conducted pursuant to the provisions of law;

23 (B) offers of purses, prizes or compensation to the actual participants in public and  
24 semipublic events, such as: rodeos, animal shows, hunting, fishing or shooting competitions,

25 expositions, fairs, athletic events, tournaments and other shows and contests where the  
26 participants qualify for a monetary prize or other recognition;

27 (C) An offer of a prize, award, or compensation to the actual contestants in a bona fide  
28 contest for the determination of skill, speed, strength, or endurance or to the owners of animals,  
29 vehicles, watercraft, or aircraft entered in a contest; or

30 (D) An offer of merchandise, with a value not greater than \$25, made by the proprietor of  
31 a bona fide carnival contest if the person to receive the merchandise from the proprietor is the  
32 person who performs the carnival contest.

33 "Gambling device" is:

34 (1) A contrivance designed primarily for gambling purposes which for consideration affords  
35 the player an opportunity to obtain something of value, the award of which is determined by  
36 chance;

37 (2) Gambling device includes any table games, roulette wheels, wheels of fortune, video  
38 lottery terminals, slot machines, cards, dice, chips, tokens, markers, paper, receipt or other  
39 document which evidences, purports to evidence, or is designed to evidence participation in a  
40 lottery or the making of a wager, including any electronic, electromechanical, or mechanical  
41 contrivance that for consideration affords the player an opportunity to obtain anything of value,  
42 the award of which is determined solely or partially by chance, even though accompanied by  
43 some skill, whether or not the prize is automatically paid by the contrivance.

44 (3) Gambling device also includes, but is not limited to versions of bingo, keno, blackjack,  
45 lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games,  
46 including facsimiles, that operate by chance;

47 (4) For the purposes of this article "gambling device" does not include:

48 (A) Any electronic, electromechanical, or mechanical contrivance designed, made, and  
49 adapted solely for bona fide amusement purposes if the contrivance rewards the player  
50 exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value

51 redeemable for those items, that have a wholesale value available from a single play of the game  
52 or device of not more than \$5;

53 (B) Any gambling device permitted, used, and authorized for gambling under the laws of  
54 the State of West Virginia;

55 (C) A device 25 years or older that is not used for gambling purposes;

56 (D) A device used solely for the purpose of teaching machine repair; or,

57 (E) Any gaming systems, games or any tangible evidence of participation in on-line  
58 gambling, games or gaming systems authorized under the laws of the State of West Virginia.

59 (5) The fact that the prize is not automatically paid by the device does not affect its  
60 character as a gambling device.

61 “Gambling premises” is any real estate, place, room, building, boat, tent, vehicle or other  
62 property, which is used for making and settling wagers, bookmaking, receiving, holding, recording  
63 or forwarding bets or offers to wager; conducting unauthorized lotteries; or playing gambling  
64 devices. Evidence that the place has a general reputation as gambling premises, was frequently  
65 visited by persons known to be gamblers or known as frequenters of gambling premises is  
66 admissible on the issue of whether it is a gambling premises. Gambling premises does not include  
67 any place, room, building, or location permitted, used and authorized for gambling under the laws  
68 of the State of West Virginia.

69 “Person” means any natural person or corporation, limited liability company, trust,  
70 association, partnership, joint venture, subsidiary, or other business entity.

71 “Commercial gambling” includes:

72 (1) Operating or receiving all or part of the earnings of gambling premises;

73 (2) Receiving, recording, or forwarding wagers or offers to wager or, with intent to receive,  
74 record or forward wagers or offers to wager, possessing facilities to do so;

75 (3) Becoming a custodian of anything of value wagered or offered to be wagered;

76 (4) Conducting wagering, or with intent to conduct wagering or a lottery, possessing

77 facilities to do so;

78 (5) Setting up for use or collecting the proceeds of any gambling device; or,

79 (6) Alone or with others, owning, controlling, managing, or financing a gambling premises,  
80 gambling machine, or other activity involving unlawful wagers.

81 (f) For the purposes of this article, commercial gambling does not include any gambling  
82 activities authorized under the laws of the State of West Virginia.

**§61-10-1a. Keeping or exhibiting gaming table, machine, or device; penalty; seizure of table, machine, or device; forfeiture of money used in such gaming.**

1 (a) Any person who:

2 (1) Knowingly possesses, keeps, or exhibits an unlicensed gambling device;

3 (2) Knows or has reason to know these unlicensed gambling devices will be used in  
4 making or settling commercial gambling transactions; or,

5 (3) Deals in unlicensed gambling devices with the intent to facilitate commercial gambling  
6 transactions, is guilty of a Class 1 misdemeanor.

7 (b) Any gambling device and all money staked or exhibited to allure persons to engage in  
8 gambling to wager upon a gambling device, may be seized by order of a court. All money so  
9 seized shall be forfeited to the county in which such seizure is made. Upon completion of any  
10 criminal or civil proceedings related to a gambling device, said device shall be destroyed.

11 (c) The provisions of this section do not extend to coin-operated non-payout machines  
12 with free play feature, or to automatic weighing, measuring, musical and vending machines  
13 designed, intended, and constructed to provide uniform and fair return in value or services for  
14 each coin deposited therein with no element of chance.

**§61-10-2. Permitting gaming table or device on premises; penalty.**

1 ~~If any~~ Any person who knowingly permits a ~~gaming table, bank or device, such as is~~  
2 ~~mentioned in the preceding section,~~ a gambling device to be kept or exhibited on any premises  
3 in his ~~occupation~~ ownership, leasehold, occupation, or possession ~~he shall be guilty of a~~

4 misdemeanor, and, upon conviction, shall be confined in jail not more than one year, and be fined  
5 not less than \$100 nor more than \$1,000. is guilty of a Class 1 misdemeanor.

**§61-10-3. Unlawful to act as doorkeeper, guard or watch for keeper of gaming table or device gambling premises; interfere in lawful arrest or seizure; penalty.**

1 If any person shall act:

2 (1) Acts as doorkeeper, guard or watch, for gambling premises, or employs another person  
3 to act as such, for a keeper or exhibitor of any such gaming table, bank or device, or shall resist,  
4 or by any means or device, prevent, hinder or delay the lawful arrest of such keeper or exhibitor,  
5 or the seizure of the table, bank or device, or money exhibited or staked thereat, or shall unlawfully  
6 take the same from the person seizing it, he shall be guilty of a misdemeanor, and, upon  
7 conviction, shall be confined in jail not more than one year and be fined not exceeding \$1,000 or

8 (2) Resists, prevents, hinders or delays the lawful arrest of a gambling premise's owner,  
9 manager, employees, or patrons; or

10 (3) Resists, prevents, hinders or delays the seizure of a gambling device, or money  
11 exhibited or staked at the gambling premises; or

12 (4) Unlawfully takes or secures any gambling device, slot machine, money or other  
13 evidence from those lawfully arresting individuals;

14 (5) That person is guilty of a Class 1 misdemeanor.

**§61-10-4. Playing or betting at gaming tables and devices; playing or betting on games or events; at hotels, public places; penalty.**

1 If any person bet or play at any such gaming table, bank or device as is mentioned in the  
2 first section of this article, or if, at any hotel or tavern, or other public place, or place of public  
3 resort, he play at any game except bowls, chess or backgammon, draughts or a licensed game,  
4 or bet on the sides of those who play at any game, whether the game be permitted or licensed or  
5 not, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five  
6 nor more than \$100, and shall, if required by the court, give security for his good behavior for one

7 ~~year, or, in default thereof, may be imprisoned in the county jail not more than three months.~~

8 (a) A person commits an offense if he or she:

9 (1) Makes a wager on the partial or final result of a game or contest or on the performance  
10 of a participant in a game, a contest, or an uncertain event;

11 (2) Makes a wager on the result of any political nomination, appointment, or election or on  
12 the degree of success of any nominee, appointee, or candidate; or,

13 (3) Plays and wagers for money or other thing of value at any game played with cards,  
14 dice, balls, or any other gambling device.

15 (b) It is a defense to prosecution under this section that:

16 (1) The actor engaged in gambling in a private place;

17 (2) No person received any economic benefit other than personal winnings; and

18 (3) Except for the advantage of skill or luck, the risks of losing and the chances of winning  
19 were the same for all participants.

20 (c) It is a defense to prosecution under this section that a person played for something of  
21 value other than money using an electronic, electromechanical, or mechanical contrivance  
22 excluded from the definition of "gambling device".

23 (d) Any person who wagers or plays at any prohibited games, or who wagers or plays at  
24 any games, whether cards, dice or any other device which may be adapted to or used in playing  
25 any game of chance, or in which chance is a material element, for money, property, checks,  
26 credits or other representatives of value is guilty of a Class 1 misdemeanor.

**§61-10-5. Betting on games of chance; furnishing money or thing of value therefor; penalty.**

1 (a) ~~If any~~ Any person who wagers at any place, public or private, where gambling activities

2 are not authorized under the laws of the State of West Virginia, bet or wage money or other thing

3 of value on any game of chance, or ~~shall knowingly furnish~~ furnishes any money or other thing of

4 value to any other person to bet or wage wager on any such game, ~~he shall~~ be guilty of a petty

5 offense, misdemeanor, and, upon conviction, shall be fined not less than five nor more than three

6 hundred dollars, and shall, if required by the court, give security for his good behavior for one  
 7 year, and in default of the payment of such fine and the costs and the execution of such bond, if  
 8 such bond be required, shall be imprisoned in the county jail not less than ten nor more than thirty  
 9 days.

**§61-10-6. Permitting gaming at hotels; premises used for commercial gambling; penalty.**

1 (a) If the keeper of an establishment such as a hotel or tavern who:

2 (1) Permits unlawful gaming at his house, or at any outhouse, booth, arbor, commercial  
 3 gambling on the premises or other place appurtenant thereto; thereto or held therewith, allows  
 4 the use or continued use of that place as gambling premises; hires or permits another to set up a  
 5 gambling device; or permits commercial gambling for use in a place under the keeper's control,  
 6 ~~he shall be~~ is guilty of a class 3 misdemeanor. ~~and, upon conviction, be fined not less than \$20~~  
 7 ~~nor more than \$100, and shall forfeit his license, and shall give security for his good behavior for~~  
 8 ~~one year, or, in default of such security, be imprisoned in the county jail not more than four months.~~

9 (b) In a prosecution under this section, it shall be presumed commercial gambling was  
 10 permitted by the keeper of the hotel, unless it appears the hotelkeeper or tavernkeeper did not:

11 (1) Know of or suspect commercial gambling, or

12 (2) That the keeper endeavored to prevent it, or

13 (3) Gave information of the gambling, with the names of the players, to law enforcement  
 14 officials, or to the prosecuting attorney .

15 (c) Any person found guilty of a second offense under this section is guilty of a class 1  
 16 misdemeanor. Any person found guilty of any subsequent offense under this section is guilty of  
 17 a class 6 felony.

**§61-10-7. Presumption against hotelkeeper.**

1 [Repealed]

**§61-10-8. Gaming at outhouse of hotel; penalty.**

1 [Repealed]

**§61-10-9. Cheating at gaming; penalty.**

1           ~~If any~~ Any person playing at any game, or gambling device, or making a wager, or having  
2 a share in any stake or wager, or betting on the hands or sides of others playing at any game,  
3 gambling device, or making a wager, ~~shall cheat~~ who cheats, or by fraudulent means win or  
4 acquire for himself, or another, money or other valuable thing, ~~he shall be~~ is guilty of a class 1  
5 misdemeanor, ~~and, upon conviction, shall be confined in jail not more than one year and fined not~~  
6 ~~less than five times the value of the money or thing won or acquired.~~

**§61-10-9a. Dealing in gambling devices; penalty.**

1           Dealing in gambling devices is manufacturing, transferring, or possessing with intent to  
2 transfer any unauthorized gambling device, subassembly, or essential part thereof. Unless duly  
3 authorized by law, any person dealing in gambling devices is guilty of a class 6 felony.

**§61-10-9b. Permitting gambling devices on premises; penalty.**

1           Every person who permits any gaming device prohibited by this article, to be set up or  
2 used for the purpose of gambling in any house, building, shed, shelter, booth, lot or other premises  
3 belonging to or occupied by him, of which he has, at the time, possession or control, is guilty of  
4 a Class 3 misdemeanor. Any subsequent offense is a class 6 felony.

**§61-10-10. Poolroom defined; Selling tickets and chances in lottery; penalty.**

1           ~~The word "poolroom," wherever the same is used in this section, shall be held and~~  
2 ~~construed to mean any room where any pool ticket, chance voucher or certificate is sold entitling~~  
3 ~~or purporting to entitle the holder or promisee thereof, or any other person, to money or other~~  
4 ~~thing of value, contingent upon the result of any horse race, prizefight, game of chance, game of~~  
5 ~~skill or science, or other sport or contest.~~

6           ~~(a) Any person who shall set up or promote, or be~~ sets up or is connected with or interested  
7 in the management or operation of any poolroom place where a chance voucher or certificate is  
8 sold entitling, or purporting to entitle, the holder, promise thereof, or any other person, to money  
9 or other thing of value, contingent upon the result of any horse race, prizefight, game of chance,

10 game of skill or science, or other sport or contest, his agents, servants or employees, they, and  
11 each of them, ~~shall be~~ is guilty of a class 1 misdemeanor, ~~and, upon conviction thereof, shall be~~  
12 ~~fined not less than \$100 nor more than \$1,000 for each offense, and may, in the discretion of the~~  
13 ~~court, be confined in jail not to exceed one year.~~

14 (b) The buying, selling, or transferring of tickets or chances in any lottery ~~shall be and the~~  
15 ~~same~~ is hereby prohibited.

**§61-10-10a. Gambling premises; nuisance; abatement.**

1 Premises used for commercial gambling are hereby declared a public nuisance, and the  
2 same may be abated in the manner provided under §61-9-1 et seq. of this code.

**§61-10-11. Lotteries or raffles; penalty.**

1 ~~If any person shall set up or promote or be concerned in managing or drawing a lottery or~~  
2 ~~raffle, for money or other thing of value, or knowingly permit such lottery in any house under his~~  
3 ~~control, or knowingly permit money or other property to be raffled for in such house, or to be won~~  
4 ~~therein, by throwing or using dice, or by any other game of chance, or knowingly permit the sale~~  
5 ~~in such house of any chance or ticket, or share of a ticket, in a lottery, or any writing, certificate,~~  
6 ~~bill, token or other device purporting or intended to guarantee or assure to any person, or to entitle~~  
7 ~~him to a prize, or a share of, or interest in, a prize to be drawn in a lottery, or shall, for himself or~~  
8 ~~any other person, buy, sell, or transfer, or have in his possession for the purpose of sale, or with~~  
9 ~~intent to exchange, negotiate, or transfer, or shall aid in selling, exchanging, negotiating, or~~  
10 ~~transferring a chance or ticket, or a share of a ticket, in a lottery, or any such writing, certificate,~~  
11 ~~bill, token or device, he shall be guilty of a misdemeanor, and, upon conviction, shall, in the~~  
12 ~~discretion of the court, be confined in jail not more than one year or be fined not exceeding \$1,000,~~  
13 ~~or both: Provided, however, That this section shall not be deemed to apply to that certain type or~~  
14 ~~form of lottery or raffle designated and familiarly known as "policy" or "numbers."~~

15 (a) As used in this section:

16 "Lottery" is a scheme for the distribution of prizes by chance. For the purposes of this

17 section, the essential elements of a lottery are consideration, prize and chance;

18 "Raffle" does not include a "charitable raffle" as addressed in §§47-21-1, et seq. of this  
 19 code

20 (b) Any person who knowingly: (1) sets up, promotes, permits, uses, has a concern in, or  
 21 manages a lottery or raffle for any form of compensation; (2) permits a lottery in any premises  
 22 under their control; or (3) permits money or other property to be raffled for or won in premises  
 23 under his control or to be won therein by any related scheme or device purporting or intended to  
 24 assure any person a prize, or interest in a prize to be drawn in a lottery, is guilty of a class 1  
 25 misdemeanor.

**§61-10-11a. "Policy" or "numbers"; possession of "policy" or "numbers" slips unlawful;  
 penalty.**

1 ~~Any person who keeps, occupies or uses, or permits to be kept, occupied or used, a place,~~  
 2 ~~building, room, table, establishment or apparatus for "policy" or "numbers" playing or for the sale~~  
 3 ~~of what are commonly called "lottery policies," or who delivers or receives money or other valuable~~  
 4 ~~consideration in playing "policy" or "numbers," or in aiding in the playing thereof, or for what is~~  
 5 ~~commonly called a "lottery policy," or for any writing, or document in the nature of a bet, wager,~~  
 6 ~~or insurance upon the drawing or selection, or the drawn or selected numbers of any "policy" or~~  
 7 ~~"numbers" lottery; or who shall have in his possession, knowingly, any writing, paper or document,~~  
 8 ~~representing or being a record of any chance, share or interest in numbers sold, drawn or~~  
 9 ~~selected, or to be drawn or selected in what is commonly called "policy" or "numbers," or in the~~  
 10 ~~nature of a bet, wager or insurance, upon the drawing or selection, or the drawn or selected~~  
 11 ~~numbers of any "policy" or "numbers" lottery; or any paper, print, writing, number, device, policy~~  
 12 ~~slip, or article of any kind such as is commonly used in carrying on, promoting or playing the game~~  
 13 ~~commonly called "policy" or "numbers"; or who is the owner, agent, superintendent, janitor or~~  
 14 ~~caretaker of any place, building, or room where "policy" or "numbers" playing or the sale of what~~  
 15 ~~are commonly called "lottery policies" is carried on with his knowledge or after notification that the~~

16 ~~premises are so used, permits such use to be continued, or who aids, assists, or abets in any~~  
17 ~~manner, in any of the offenses, acts or matters herein named, shall be guilty of a felony and, upon~~  
18 ~~conviction, shall, in the discretion of the court, either be confined in the penitentiary not less than~~  
19 ~~one year nor more than five years, or be confined in jail not less than six nor more than twelve~~  
20 ~~months and fined not less than \$200 nor more than \$1,000. Upon commission of a second or~~  
21 ~~subsequent offense under this section, he shall be guilty of a felony and, upon conviction shall be~~  
22 ~~confined in the penitentiary of this state for a period of not less than two years nor more than ten~~  
23 ~~years.~~

24 Any person who knowingly:

25 (a) Keeps, occupies or uses, or permits to be kept, occupied or used, a place, building,  
26 room, table, establishment or apparatus for "policy" or "numbers" playing or for the sale of what  
27 are commonly called "lottery policies," or

28 (b) Delivers or receives money or other valuable consideration in playing "policy" or  
29 "numbers," or

30 (c) In any way aids the playing of what is commonly called a "lottery policy," or for any  
31 writing, or document in the nature of a bet, wager, or insurance upon the drawing or selection, or  
32 the drawn or selected numbers of any "policy" or "numbers" lottery, or,

33 (d) Possesses:

34 (1) Any writing, paper or document, representing or being a record of what is commonly  
35 called "policy" or "numbers," or in the nature of a bet, wager or insurance, upon the drawing or  
36 selection, or the drawn or selected numbers of any "policy" or "numbers" lottery; or,

37 (2) Any paper, print, writing, number, device, policy slip, or article of any kind such as is  
38 commonly used in carrying on, promoting or playing the game commonly called "policy" or  
39 "numbers"; or,

40 (3) Any chance, share or interest in numbers sold, drawn or selected; or

41 (e) Is the owner, agent, superintendent, janitor or caretaker of any place, building, or room

42 where "policy" or "numbers" playing or the sale of what are commonly called "lottery policies" is  
 43 carried on:

44 (1) With knowledge of the owner, or after notification that the premises are so used; or,

45 (2) Permits such use to be continued, or,

46 (3) Who aids, assists, or abets in any manner, in any of the offenses, acts or matters

47 herein named;

48 (f) Is guilty of a class 3 misdemeanor. Commission of a second or subsequent offense  
 49 under this section, is a class 6 felony.

**§61-10-11b. Possession of "policy" or "numbers" slips unlawful Seizure of gambling devices and equipment.**

1 ~~The possession, by any person other than a public officer acting in his official capacity, of~~  
 2 ~~any writing, paper, or document representing or being a record of any chance, share or interest~~  
 3 ~~in numbers, sold, given away, drawn, or selected, or to be drawn or selected, in what is commonly~~  
 4 ~~called "policy" or "numbers," or in the nature of a bet, wager or insurance upon the drawing or~~  
 5 ~~selection, or the drawn or selected numbers of any "policy" or "numbers" lottery, or any paper,~~  
 6 ~~print, writing, numbers of device, policy slip, or article of any kind, such as is commonly used in~~  
 7 ~~carrying on, promoting or playing the game commonly called "policy" or "numbers," is presumptive~~  
 8 ~~evidence of possession thereof knowingly and in violation of the provisions of section eleven-a of~~  
 9 ~~this article.~~

10 Every person who is authorized or enjoined to arrest any person for a violation of the  
 11 provisions of this article, is equally authorized and enjoined to seize any table, cards, dice, or  
 12 other articles or apparatus suitable to be used for gambling purposes found in the possession or  
 13 under the control of the person so arrested, and to deliver the same to the judicial officer or  
 14 magistrate before whom the person so arrested is required to be taken.

**§61-10-13. Associations and companies trading as bank without authority of law.**

1 Repealed]

**§61-10-14. Laws on gaming, lotteries and uncharted banks remedial.**

1 [Repealed]

**§61-10-15. Pecuniary interest of county and district officers, teachers and school officials in contracts; exceptions; offering or giving compensation; penalties.**

1 (a) It is unlawful for any member of a county commission, district school officer, secretary  
2 of a Board of Education, supervisor or superintendent, principal or teacher of public schools or  
3 any member of any other county or district board or any county or district officer to be or become  
4 pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the  
5 furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member,  
6 officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice,  
7 influence or control: *Provided*, That nothing in this section prevents or makes unlawful the  
8 employment of the spouse of a member, officer, secretary, supervisor, superintendent, principal  
9 or teacher as a principal or teacher or auxiliary or service employee in the public schools of any  
10 county or prevents or makes unlawful the employment by any joint county and circuit clerk of his  
11 or her spouse.

12 (b) Any person who violates the provisions of subsection (a) of this section is guilty of a  
13 class 1 misdemeanor ~~and, upon conviction thereof, shall be fined not less than \$50 nor more than~~  
14 ~~\$500 or confined in jail not more than one year, or both fined and confined.~~

15 (c) Any person convicted of violating the provisions of subsection (a) of this section shall  
16 also be removed from his or her office and the certificate or certificates of any teacher, principal,  
17 supervisor or superintendent so convicted shall, upon conviction thereof, be immediately revoked:  
18 *Provided*, That no person may be removed from office and no certificate may be revoked for a  
19 violation of the provisions of this section unless the person has first been convicted of the violation.

20 (d) Any person, firm or corporation that offers or gives any compensation or thing of value  
21 or who forebears to perform an act to any of the persons named in subsection (a) of this section  
22 or to or for any other person with the intent to secure the influence, support or vote of the person

23 for any contract, service, award or other matter as to which any county or school district becomes  
24 or may become the paymaster is guilty of a class 1 misdemeanor ~~and, upon conviction thereof,~~  
25 ~~shall be fined not less than \$500 nor more than \$2,500 and, in the court's discretion, the person~~  
26 ~~or any member of the firm or, if it is a corporation, any agent or officer of the corporation offering~~  
27 ~~or giving any compensation or other thing of value may, in addition to a fine, be confined in jail for~~  
28 ~~a period not to exceed one year.~~

29 (e) The provisions of subsection (a) of this section do not apply to any person who is a  
30 salaried employee of a vendor or supplier under a contract subject to the provisions of said  
31 subsection if the employee, his or her spouse or child:

32 (1) Is not a party to the contract;

33 (2) Is not an owner, a shareholder, a director, or an officer of a private entity under the  
34 contract;

35 (3) Receives no commission, bonus or other direct remuneration or thing of value by virtue  
36 of the contract;

37 (4) Does not participate in the deliberations or awarding of the contract; and

38 (5) Does not approve or otherwise authorize the payment for any services performed or  
39 supplies furnished under the contract.

40 (f) The provisions of subsection (a) of this section do not apply to any person who has a  
41 pecuniary interest in a bank within the county serving or under consideration to serve as a  
42 depository of funds for the county or Board of Education, as the case may be, if the person does  
43 not participate in the deliberations or any ultimate determination of the depository of the funds.

44 (g) The provisions of subsection (a) of this section do not apply to any person who has a  
45 pecuniary interest in a public utility which is subject to regulation by the Public Service  
46 Commission of this state.

47 (h) Where the provisions of subsection (a) of this section would result in the loss of a  
48 quorum in a public body or agency, in excessive cost, undue hardship or other substantial

49 interference with the operation of a governmental body or agency, the affected governmental  
50 body or agency may make written application to the West Virginia Ethics Commission pursuant  
51 to §6B-2-5 (d) of this code for an exemption from subsection (a) of this section.

52 (i) The provisions of this section do not apply to publications in newspapers required by  
53 law to be made.

54 (j) No school employee or school official subject to the provisions of subsection (a) of this  
55 section has an interest in the sale, proceeds or profits in any book or other thing used or to be  
56 used in the free school system of this state, as proscribed in section nine, article XII of the  
57 Constitution of West Virginia, if they qualify for the exceptions set forth in subsection (e), (f),(g) or  
58 (h) of this section.

59 (k) The provisions of subsection (a) of this section do not prevent or make unlawful the  
60 employment of the spouse of any member of a county commission as a licensed health care  
61 provider at government-owned hospitals or other government agencies who provide health care  
62 services: *Provided*, That the member of a county commission whose spouse is employed or to be  
63 employed may not:

64 (1) Serve on the board for the government-owned hospital or other government agency  
65 who provides health care services where his or her spouse is employed or to be employed;

66 (2) Vote on the appointment of members to the board for the government-owned hospital  
67 or other government agency who provides health care services where his or her spouse is  
68 employed or to be employed; or

69 (3) Seek to influence the hiring or promotion of his or her spouse by the government-  
70 owned hospital or other government agency who provides health care services.

71 (l) The provisions of subsection (a) of this section do not make unlawful the employment  
72 of a spouse of any elected county official by that county official: *Provided*, That the elected county  
73 official may not:

74 (1) Directly supervise the spouse employee; or

75 (2) Set the salary of the spouse employee: *Provided*, That the provisions of this subsection  
76 shall only apply to spouse employees who were neither married to nor engaged to the elected  
77 county official at the time of their initial hiring.

**§61-10-16. Picture or theatrical act reflecting upon any race or class of citizens; penalty.**

1 It ~~shall be~~ is unlawful for any person, corporation or company to advertise, exhibit, display  
2 or show any picture or theatrical act in any theater or other place of public amusement or  
3 entertainment within this state, which shall in any manner injuriously reflect upon the proper and  
4 rightful progress, status, attainment or endeavor of any race or class of citizens, calculated to  
5 result in arousing the prejudice, ire or feelings of one race or class of citizens against any other  
6 race or class of citizens. Any person, corporation or company violating any of the provisions of  
7 this section ~~shall be~~ is guilty of a class 3 misdemeanor, ~~and, upon conviction, shall be fined not~~  
8 ~~less than \$100 nor more than \$1,000, and may, in the discretion of the court, be confined in jail~~  
9 ~~not more than thirty days.~~

**§61-10-17. Lobbying on floor of Legislature; ejection of lobbyist; penalty; jurisdiction.**

1 It ~~shall be~~ is unlawful for any person to lobby for or against any measure on the floor of  
2 either house of the Legislature while the same is in session. If any person be found so lobbying  
3 in violation of this section, it shall be the duty of the sergeant at arms to eject such person from  
4 the floor of either house of the Legislature, upon his own knowledge, or upon the complaint of any  
5 member. Any person violating the provisions of this section ~~shall be~~ is guilty of a class 3  
6 misdemeanor, ~~and, upon conviction thereof, shall be fined not less than \$50 nor more than \$200,~~  
7 ~~and in addition thereto he shall be imprisoned in the county jail of the county where such~~  
8 ~~conviction is had, for not less than ten days nor more than six months.~~ Any of the circuit courts or  
9 magistrate courts criminal courts, or justices of the peace within the county of Kanawha are hereby  
10 given jurisdiction of the offense herein set forth, and the proceedings hereunder shall be  
11 conducted as for other offenses.

**§61-10-19. Cornering market on food or other necessities of life; penalty.**

[Repealed]

**§61-10-20. Failure of employers to provide certain benefits for employees.**

1 (a) In addition to any other penalty or punishment otherwise prescribed by law, any  
 2 employer who is party to an agreement to pay or provide benefits or wage supplements and who  
 3 without reasonable justification willfully fails or refuses to pay the amount or amounts necessary  
 4 to provide the benefits or furnish the supplements within 30 days after the payments are required  
 5 to be made, is guilty of a petty offense, ~~misdemeanor and, upon conviction thereof, shall be fined~~  
 6 ~~not less than \$100 nor more than \$500~~. When the employer is a corporation, the president,  
 7 secretary, treasurer, or officer exercising responsibility for the nonpayment is guilty of the offense  
 8 prohibited by this section.

9 (b) Any person who is responsible for ensuring that an entity complies with the  
 10 requirements of a retirement plan administered by the Consolidated Public Retirement Board  
 11 pursuant to §5-10D-1, et seq. of this code, who knowingly and willfully fails to make employee or  
 12 employer contributions to the retirement plan for a period of 60 days after the payment is due is  
 13 guilty of a class 2 misdemeanor ~~and, upon conviction thereof, shall be fined not less than \$100~~  
 14 ~~nor more than \$500 or shall be confined in jail for not more than six months, or both fined and~~  
 15 ~~confined.~~

16 (c) Conviction of a violation of subsection (b) of this section is prima facie evidence of  
 17 official misconduct.

**§61-10-21. Unlawful use of prefix “Doctor” or “Dr.” penalty.**

1 It ~~shall be~~ is unlawful for any person to use the prefix “Doctor” or “Dr.” in connection with  
 2 his their name in any letter, business card, advertisement, sign or public display of any nature  
 3 whatsoever, without affixing thereto suitable words or letters designating the accredited degree  
 4 which they hold. he holds. Any person who ~~shall violate~~ violates the provisions of this section ~~shall~~  
 5 ~~be~~ is guilty of a class 1 misdemeanor ~~and, upon conviction thereof shall be fined for each such~~  
 6 ~~offense not less than \$10 nor more than \$500, or imprisoned in the county jail not more than~~

7 ~~twelve months, or both fined and imprisoned, in the discretion of the court.~~

**§61-10-22. Bribery of participants in professional or amateur games and horse racing; penalty.**

1       (a) Whoever gives, promises or offers a bribe or any valuable thing to any professional or  
2 amateur baseball, football, basketball, hockey player or boxer or any player who participates in  
3 any professional or amateur game or sport athlete, player, manager, coach, referee, umpire, or  
4 any other participant or official of any athletic contest, or to any jockey, driver, groom or any person  
5 participating in any horse race, including owners of racetracks and their employees, stewards,  
6 trainers, judges, starters, special policemen, ~~any valuable thing,~~ with intent to influence him or her  
7 to:

8       (1) Lose, try to lose, cause a loss, or try to limit the margin of victory or defeat in any horse  
9 race or athletic contest, or to aid or abet or assist in any manner whatsoever in any such bribe;  
10 or, lose or try to lose or cause to be lost a baseball, football, basketball or hockey game, boxing  
11 match or a horse race or any professional or amateur sport, or game, in which such player or  
12 participant or jockey or driver is taking part or expects to take part, or has any duty or connection  
13 therewith, or who, being either a professional or amateur baseball, football, basketball, hockey  
14 player, boxer, or jockey, driver, or groom or participant in any sport or game whoever

15       (2) Solicits or accepts a bribe or any valuable thing to influence him or her to lose, try to  
16 lose, cause a loss, or try to limit the margin of victory or defeat in any horse race or athletic contest;  
17 or,

18       (3) Aids, abets, or assists in any manner whatsoever in any such bribe. ~~lose or cause to~~  
19 ~~be lost a baseball, football, basketball, hockey or boxing match, or horse race or any professional~~  
20 ~~or amateur game or any professional or amateur sport in which he is taking part, or expects to~~  
21 ~~take part, or has any duty or connection therewith; shall be guilty of a felony and, punishable by~~  
22 ~~imprisonment for not less than one year, nor more than three years, or by a fine of not more than~~  
23 ~~one thousand dollars, or by both fine and imprisonment.~~

24 (b) Any person who violates any provision of this section is guilty of a class 6 felony.

**§61-10-23. Debt pooling; definition; offenses; penalty; jurisdiction; pleading and proof.**

1 (a) "Debt pooling" shall mean means providing the rendering in any manner of advice or  
 2 services ~~of any and every kind~~ in the establishment or operation of a plan ~~pursuant to which~~ for a  
 3 debtor ~~would deposit or does~~ to deposit funds for the purpose of distributing such funds among  
 4 his creditors.

5 (b) It shall be is unlawful:

6 (1) for any person to solicit in any manner a debt pooling To solicit a debt pooling in any  
 7 manner;

8 (2)It shall further be unlawful For any person, except licensed attorneys, to make any  
 9 charge for a debt pooling by way of fee, reimbursement of costs, or otherwise;

10 (3) For any charge for a debt pooling service or advice to exceed ~~in excess of~~ an amount  
 11 equal to two percent of the total amount of money actually deposited pursuant to a debt pooling;  
 12 ~~Provided, That~~

13 (c) Any nonprofit firm, corporation or voluntary association may make an additional charge  
 14 not to exceed ~~exceeding~~ five percent of the total amount of money actually deposited pursuant to  
 15 a debt pooling, to defray costs of counseling services furnished for the benefit of its clientele of  
 16 debtors generally with respect to personal money management.

17 (d) Any person, whether acting as agent or otherwise, who violates any provision of this  
 18 section shall be is guilty of a class 3 misdemeanor, ~~and, upon conviction, shall be fined not less~~  
 19 ~~than \$100 nor more than \$250 or confined in jail not less than thirty nor more than sixty days or~~  
 20 ~~both. Justices of the peace and other competent courts shall have concurrent jurisdiction of~~  
 21 ~~offenses under this section. It shall not be necessary in any warrant issued or indictment returned~~  
 22 ~~under this section to allege exceptions or provisos contained in this section but in the trial of an~~  
 23 ~~offense subject thereto it shall be the duty of the state to negative such exceptions and provisos.~~

**§61-10-30. Open water wells prohibited.**

1           It ~~shall be~~ is unlawful for any person to keep, maintain or allow any abandoned or currently  
 2 used water well upon any land in which such person has any right to possession as owner, tenant  
 3 or otherwise, which does not have affixed thereto a cover of sufficient strength to prevent any  
 4 person from accidentally falling into such well. Any person who violates this section is guilty of a  
 5 class 3 misdemeanor.

**§61-10-31. Conspiracy; construction of section; penalties.**

1           (a) It ~~shall be~~ is unlawful for two or more persons to conspire (1) to:

2           (1) Commit any offense against the state; or (2) to

3           (2) Defraud the state, the state or any county board of education, or any county or  
 4 municipality of the state, if, in either case, one or more of such persons does any act to effect the  
 5 object of the conspiracy.

6           (b) Nothing in this section ~~shall~~ may be construed to supersede, limit, repeal or affect the  
 7 provisions of §3-9-8; §5-1-2; §5A-3-38; §20-7-7; §60-6-16; ~~§§ 61-6-7, 8, 9 and 10;~~ or §62-8-1, all  
 8 of this code. It ~~shall not be~~ is not a defense to any prosecution under this section ~~thirty-one~~ that  
 9 the conduct charged or proven is also a crime under any other provision or provisions of this code  
 10 or the common law.

11           (c) Any person who violates the provisions of this section by conspiring to commit an  
 12 offense against the state which is a felony, ~~or by conspiring to defraud the state, the state or any~~  
 13 ~~county board of education, or any county or municipality of the state, shall be guilty of a felony,~~  
 14 ~~and, upon conviction thereof, shall be~~ is guilty of a class 6 felony, ~~punished by imprisonment in~~  
 15 ~~the penitentiary for not less than one nor more than five years or by a fine of not more than~~  
 16 ~~\$10,000, or, in the discretion of the court, by both such imprisonment and fine.~~

17           (d) Any person who violates the provisions of this section by conspiring to commit an  
 18 offense against the state which is a misdemeanor ~~shall be~~ is guilty of a class 1 misdemeanor,  
 19 ~~and, upon conviction thereof, shall be punished by confinement in the county jail for not more than~~  
 20 ~~one year or by a fine of not more than \$1,000, or, in the discretion of the court, by both such~~

21 ~~confinement and fine.~~

**§61-10-32. Unlawful contact with a Division of Corrections employee or member of the parole board; penalty.**

1 (a) It ~~shall be~~ is unlawful for a former inmate of the Division of Corrections to make a  
2 telephone call to a Division of Corrections employee or member of the parole board when the  
3 employee has requested in writing to that former inmate that he or she not call and the former  
4 inmate has actually been served with a copy of the written request.

5 (b) It ~~shall be~~ is unlawful for a former inmate of the Division of Corrections to willfully and  
6 repeatedly follow a Division of Corrections employee or member of the parole board with whom  
7 he or she seeks to establish a personal or social relationship when the Division of Corrections  
8 employee or member of the parole board has expressed to the former inmate that he or she  
9 wishes not to have contact with the former inmate.

10 (c) It ~~shall be~~ is unlawful for a former inmate of the Division of Corrections to harass or  
11 make credible threats against a Division of Corrections employee or member of the parole board.

12 (d) Any offense committed under subsection (a) may be deemed to have occurred at the  
13 place at which the telephone call was made, or the place at which the telephone call was received.

14 (e) Any person who violates any provision of this section ~~shall be~~ is guilty of a petty  
15 offense. ~~misdemeanor and, upon conviction thereof, shall, for a first offense, be fined not more~~  
16 ~~than five hundred dollars. Any person violating this section for a second offense shall be~~ is guilty  
17 of a class 2 misdemeanor. ~~imprisoned not less than ten days nor more than six months, or both~~  
18 ~~fined and imprisoned.~~

19 (f) For purposes of this section:

20 "Harass" means willful conduct directed at a specific person or persons which would cause  
21 a reasonable person mental injury or emotional distress;

22 "Credible threat" means a threat of bodily injury made with apparent ability to carry out the  
23 threat and with the result that a reasonable person would believe that the threat would be carried

24 out;

25 “Bodily injury” means substantial physical pain, illness or any impairment of physical  
26 condition;

27 “Immediate family” means a spouse, parent, stepparent, mother-in-law, father-in-law,  
28 child, stepchild, sibling, or any person who regularly resides in the household or within the prior  
29 six months regularly resided in the household.

30 Upon conviction, the court may issue an order restraining the defendant from any contact  
31 with the victim for a period not to exceed 10 years. The length of any restraining order shall be  
32 based upon the seriousness of the violation before the court, the probability of future violations,  
33 and the safety of the victim or his immediate family. The duration of the restraining order may be  
34 longer than five years only in cases when a longer duration is necessary to protect the safety of  
35 the victim or his or her immediate family.

36 (h) It is a condition of bond for any person accused of the offense described in this section  
37 that the person is to have no contact, direct or indirect, verbal, or physical with the alleged victim.

**§ 61-10-33. Prohibition against selling a pure caffeine product.**

1 (a)“Pure caffeine product” means a product that is comprised of 90 percent or more  
2 caffeine and is manufactured into a crystalline, liquid, or powdered form. “Pure caffeine product”  
3 does not include any of the following that contains caffeine and is formulated, manufactured, and  
4 labeled in accordance with the laws and regulations enforced by the United States Food and Drug  
5 Administration:

6 (1) Coffee, tea, soft drink, energy drink, or any other caffeine-containing beverage;

7 (2) Any energy product.

8 (b) Except as provided in subsection (c), no person shall knowingly possess, sell, or offer  
9 for sale a pure caffeine product.

10 (c) Subsection (b) does not prohibit a person from possessing, selling, or offering for sale  
11 any product manufactured in a unit-dose form such as a pill, tablet, or caplet, but only if each unit

12 dose of the product contains not more than 250 milligrams of caffeine.

13 (d) Nothing in this section prohibits either of the following:

14 (1) Possession of a product described in subsection (c);

15 (2) Possession of a pure caffeine product by any of the following:

16 (A) A food processing establishment;

17 (B) A manufacturer of a drug that is available without a prescription;

18 (C) A laboratory that is licensed by the Board of Pharmacy;

19 (D) A laboratory of any agency or department of this state that performs testing, analysis,  
20 and other laboratory services on behalf of the state; and

21 (E) A postal or delivery service that transports or delivers a pure caffeine product to an  
22 entity specified in subsections (A) to (D) of this section.

23 (e) A person who violates subsection (b) of this section is guilty of a petty offense;  
24 misdemeanor and, upon conviction thereof, shall be fined not more than \$100.

**§61-10-34. Critical Infrastructure Protection Act; prohibiting certain acts, including  
trespass and conspiracy to trespass against property designated a Critical  
Infrastructure facility; criminal penalties; and civil action.**

1 [Repealed]

**ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES**

**§ 61-11-1. Classification of crimes.**

[Repealed]

**§ 61-11-1a. Sentence of female felons.**

1 Upon conviction of a female for a felony and, subsequent sentence of confinement, the  
2 trial court shall sentence her to the custody of the ~~state department of corrections~~ West Virginia  
3 Division of Corrections and Rehabilitation.

**§ 61-11-3. Punishment for common law offense.**

1 [Repealed]

**§61-11-6. Punishment of principals in the second degree and accessories before and after the fact.**

1 (a) In the case of every felony, every principal in the second degree and every accessory  
2 before the fact shall be punishable as if he or she were the principal in the first degree; and every  
3 accessory after the fact ~~, upon conviction, is guilty of a class 1 misdemeanor, shall be confined in~~  
4 ~~jail not more than one year and fined not exceeding \$500.~~

5 (b) ~~But no~~ No person in the relation of husband and wife, parent or grandparent, child or  
6 grandchild, brother, or sister, by consanguinity or affinity, or servant to the offender, who, after  
7 the commission of a felony, ~~shall aid or assist~~ aids or assists a principal felon, or accessory before  
8 the fact, to avoid or escape from prosecution or punishment ~~may be deemed~~ determined an  
9 accessory after the fact.

10 (b) ~~(c)~~ (c) Notwithstanding the provisions of subsection (a) of this section, any person who  
11 knowingly harbors, conceals, maintains or assists the principal felon after the commission of the  
12 underlying offense violating the felony provisions of §61-2-1, §61-2-4 or §61-2-9 of this code, or  
13 gives ~~such~~ the offender aid knowing that he or she has committed such felony, with the intent that  
14 the offender avoid or escape detention, arrest, trial or punishment, shall be considered an  
15 accessory after the fact and, upon conviction, ~~be~~ is guilty of a class 6 felony ~~and, confined in a~~  
16 ~~state correctional facility for a period not to exceed five years, or a period of not more than one~~  
17 ~~half of the maximum penalty for the underlying felony offense, whichever is the lesser maximum~~  
18 ~~term of confinement.~~

19 (d) ~~But no~~ No person related to the offender as who is a person in the relation of husband  
20 and wife, parent, grandparent, child, grandchild, brother, or sister, whether by consanguinity or  
21 affinity, or servant to the offender ~~shall~~ may be considered an accessory after the fact.

**§61-11-8. Attempts; classification and penalties therefor.**

1 Every person who attempts to commit an offense, but fails to commit or is prevented from  
2 committing it, shall, where it is not otherwise provided, be punished as follows:

3 (1) If the offense attempted ~~be~~ is punishable with life imprisonment, the person making  
4 such attempt ~~shall be~~ is guilty of a class 4 felony ~~and, upon conviction, shall be imprisoned in the~~  
5 ~~penitentiary not less than three nor more than fifteen years.~~

6 (2) If the offense attempted be punishable by imprisonment in the penitentiary for a term  
7 less than life, such person ~~shall be~~ is guilty of a class 6 felony ~~and, upon conviction, shall, in the~~  
8 ~~discretion of the court, either be imprisoned in the penitentiary for not less than one nor more than~~  
9 ~~three years, or be confined in jail not less than six nor more than twelve months, and fined not~~  
10 ~~exceeding \$500.~~

11 (3) If the offense attempted be punishable by confinement in jail, such person ~~shall be~~ is  
12 guilty of a class 2 misdemeanor ~~and, upon conviction, shall be confined in jail not more than six~~  
13 ~~months, or fined not exceeding \$100.~~

**§61-11-8a. Solicitation to commit certain felonies; classification; defenses.**

1 (a) Any person who solicits another to commit a violation of the law which constitutes a  
2 felony crime of violence against the person is guilty of a class 4 felony. If the offense solicited is  
3 punishable for a term of less than life imprisonment, a person so convicted may be determined  
4 guilty of a class 1 misdemeanor.

5 ~~(1) Confined in a state correctional facility for not less than three nor more than fifteen~~  
6 ~~years if the offense solicited is punishable by life imprisonment;~~

7 ~~(2) Imprisoned in the state correctional facility for not less than one nor more three years~~  
8 ~~or fined not more than \$5,000, or both, if the offense solicited is punishable by incarceration in~~  
9 ~~the state correctional facility for a term of less than life imprisonment. In the circuit court's~~  
10 ~~discretion a person so convicted may be ordered confined in jail for a term not to exceed one~~  
11 ~~year in lieu of incarceration in a state correctional facility;~~

12 (b)(1) As used in this section, "solicitation" means the willful and knowing instigation or  
13 inducement of another to commit a felony crime of violence against the person of a third person;  
14 and

15 (2) As used in this section, "felony crime of violence against the person" means the felony  
16 offense set forth in §61-2-1, §61-2-9, §61-2-10b, and §61-2-12 of this code.

17 (c) In a prosecution under the provisions of this section, it is not a defense:

18 (1) That the defendant belongs to a class of persons who by definition are legally incapable  
19 in an individual capacity of committing the crime that is the object of the solicitation; or

20 (2) That a person whom the defendant solicits could not be guilty of a crime that is the  
21 object of the solicitation.

22 (d) It is an affirmative and complete defense to a prosecution under the provisions of this  
23 section that the defendant under circumstances manifesting a voluntary and complete  
24 renunciation of the defendant's criminal intent, after soliciting another person to engage in conduct  
25 constituting a felony, prevented the commission of the crime.

#### **ARTICLE 11A. VICTIM PROTECTION OF ACT OF 1984.**

##### **§ 61-11A-7. Severability.**

1 [Repealed]

#### **ARTICLE 12.POSTMORTEM EXAMINATION.**

##### **§ 61-12-8. Certain deaths to be reported to medical examiners; failure to report deaths; investigations and reports; authority of medical examiners to administer oaths, etc., fees.**

1 (a) When any person dies in this state from violence, or by apparent suicide, or suddenly  
2 when in apparent good health, or when unattended by a physician, or when an inmate of a public  
3 institution, or from some disease which might constitute a threat to public health, or in any  
4 suspicious, unusual or unnatural manner, the chief medical examiner, or his or her designee or  
5 the county medical examiner, or the coroner of the county in which death occurs shall be  
6 immediately notified by the physician in attendance, or if no physician is in attendance, by any  
7 law-enforcement officer having knowledge of the death, or by the funeral director, or by any other

8 person present or having knowledge. Any physician or law-enforcement officer, funeral director  
9 or embalmer who willfully fails to comply with this notification requirement is guilty of a petty  
10 offense, ~~misdemeanor and, upon conviction, shall be fined not less than \$100 nor more than~~  
11 \$500.

12 (b) Upon notice of a death under this section, the chief medical examiner, or his or her  
13 designee or the county medical examiner, shall take charge of the body and any objects or articles  
14 which, in his or her opinion, may be useful in establishing the cause or manner of death, and  
15 deliver them to the law-enforcement agency having jurisdiction in the case. In the course of an  
16 investigation of a death required to be reported by this section, the chief medical examiner shall,  
17 upon written request to any law-enforcement agency or any state or regional correctional facility,  
18 be provided with all records of the investigation of decedent's death and all records of decedent's  
19 incarceration. Where a decedent received therapeutic, corrective or medical treatment prior to  
20 death, the chief medical examiner may request in writing that any person or other entity which  
21 rendered the treatment promptly provide all records within its possession or control pertaining to  
22 the decedent and the treatment rendered: *Provided, That* nothing contained in this section may  
23 be construed as precluding the chief medical examiner from directly inspecting or obtaining  
24 investigation records, incarceration records or medical records related to the case. Where records  
25 of a decedent become part of the chief medical examiner's file, they are not subject to subpoena  
26 or a request for production directed to the chief medical examiner.

27 ~~(b)~~ (c) A county medical examiner, or his or her assistant, shall make inquiries regarding  
28 the cause and manner of death, reduce his or her findings to writing, and promptly make a full  
29 report thereof to the chief medical examiner on forms prescribed by the chief medical examiner,  
30 retaining one copy of the report for his or her own office records and providing one copy to the  
31 prosecuting attorney of the county in which the death occurred.

32 ~~(c)~~ (d) A county medical examiner or assistant medical examiner shall receive a fee for  
33 each investigation performed under the provisions of this article, including the making of required

34 reports, which fee shall be determined by the chief medical examiner and paid out of funds  
35 appropriated therefor.

**§ 61-12-9. Permits required for cremation; fee.**

1 (a) It is the duty of any person cremating, or causing or requesting the cremation of, the  
2 body of any dead person who died in this state, to secure a permit for the cremation from the  
3 Chief Medical Examiner, the county medical examiner or county coroner of the county wherein  
4 the death occurred. Any person who willfully fails to secure a permit for a cremation, is guilty of a  
5 ~~petty offense, misdemeanor and, upon conviction thereof, shall be fined not less than \$200.~~ A  
6 permit for cremation shall be acted upon by the Chief Medical Examiner, the county medical  
7 examiner or the county coroner after review of the circumstances surrounding the death, as  
8 indicated by the death certificate. The person requesting issuance of a permit for cremation shall  
9 pay a reasonable fee, as determined by the Chief Medical Examiner, to the county medical  
10 examiner or coroner or to the Office of the Chief Medical Examiner, as appropriate, for issuance  
11 of the permit.

12 (b) Any person operating a crematory who does not perform a cremation pursuant to the  
13 terms of a cremation contract, or pursuant to the order of a court of competent jurisdiction, within  
14 the time contractually agreed upon, or, if the cremation contract does not specify a time period,  
15 within 21 days of receipt of the deceased person's remains by the crematory, whichever time is  
16 less, is guilty of a class 2 misdemeanor.

17 (c) Any person operating a crematory who fails to deliver the cremated remains of a  
18 deceased person, pursuant to the terms of a cremation contract, or pursuant to the order of a  
19 court of competent jurisdiction, within the time contractually agreed upon, or, if the cremation  
20 contract does not specify a time period, within 35 days of receipt of the deceased person's  
21 remains by the crematory, whichever time is less, is guilty of a class 2 misdemeanor.

22 ~~(d) Any person convicted of a violation of the provisions of subsection (b) or (c) of this~~  
23 ~~section shall be fined not less than \$1,000 nor more than \$5,000 or confined in jail for a period~~

24 ~~not to exceed six months, or both.~~

25 ~~(e)~~ (d) In any criminal proceeding alleging that a person violated the time requirements of  
26 this section, it is a defense to the charge that a delay beyond the time periods provided for in this  
27 section were caused by circumstances wholly outside the control of the defendant.

28 ~~(f)~~ (e) For purposes of this section, "cremation contract" means an agreement to perform  
29 a cremation, as a "cremation" is defined in §30-6-3(g) of this code. A cremation contract is an  
30 agreement between a crematory and any authorized person or entity, including, but not limited to,  
31 the following persons in order of precedence:

32 (1) The deceased, who has expressed his or her wishes regarding the disposal of their  
33 remains through a last will and testament, an advance directive or preneed funeral contract, as  
34 defined in §45-14-2 of this code;

35 (2) The surviving spouse of the deceased, unless a petition to dissolve the marriage was  
36 pending at the time of decedent's death;

37 (3) An individual previously designated by the deceased as the person with the right to  
38 control disposition of the deceased's remains in a writing signed and notarized by the deceased:  
39 *Provided*, That no person may be designated to serve in such capacity for more than one  
40 nonrelative at any one time;

41 (4) The deceased person's next of kin;

42 (5) A public official charged with arranging the final disposition of an indigent deceased  
43 person or an unclaimed corpse;

44 (6) A representative of an institution who is charged with arranging the final disposition of  
45 a deceased who donated his or her body to science;

46 (7) A public officer required by statute to arrange the final disposition of a deceased  
47 person;

48 (8) Another funeral establishment; or

49 (9) An executor, administrator, or other personal representative of the deceased.

**§ 61-12-13. Reports and records received as evidence; copies.**

1           (a) Reports of investigations and autopsies, and the records thereof, on file in the office  
 2 of the chief medical examiner or in the office of any county medical examiner, ~~shall~~ may be  
 3 received as evidence in any court or other proceeding, and where:

4           (1) The performing medical examiner, pathologist, or other employee of the Chief Medical  
 5 Examiner or office of any county medical examiner, is unavailable to testify at trial; and,

6           (2) An accused has had prior opportunity to cross-examine the performing medical  
 7 examiner, pathologist, or other employee of the Chief Medical Examiner or office of any county  
 8 medical examiner.

9           (b) Copies of records, photographs, laboratory findings and records on file in the office of  
 10 the chief medical examiner or in the office of any county medical examiner, when duly attested  
 11 by the chief medical examiner or by the county medical examiner, assistant county medical  
 12 examiner or coroner in whose office the same are filed, ~~shall~~ may be received as evidence in any  
 13 court or other proceeding for any purpose for which the original could be received without any  
 14 proof of the official character of the person whose name is signed thereto unless objected to by  
 15 counsel. ~~Provided, That statements~~

16           (c) Admissibility of witnesses or other persons and conclusions upon evidence regarding  
 17 extraneous matters is not affected by this section. ~~are not hereby made admissible.~~

**ARTICLE 13. ANTI-ORGANIZED CRIMINAL ENTERPRISE ACT****§ 61-13-3. Offenses.**

1           (a) Any person who knowingly and willfully becomes a member of an organized criminal  
 2 enterprise and who knowingly promotes, furthers, or assists in the commission of any qualifying  
 3 offense himself or herself or in combination with another member of an organized criminal  
 4 enterprise ~~shall be~~ is guilty of a class 5 felony ~~and, upon conviction, shall be confined in a state~~  
 5 ~~correctional facility for not more than ten years or fined not more than \$25,000, or both.~~ The  
 6 offense set forth in this subsection is separate and distinct from that of any qualifying offense and

7 may be punished separately.

8 (b) Any person who knowingly solicits, invites, recruits, encourages, or causes another to  
9 become a member of an organized criminal enterprise or to assist members of an organized  
10 criminal enterprise to aid or assist in the commission of a qualifying offense by one or more  
11 members of an organized criminal enterprise ~~shall be~~ is guilty of a class 6 felony ~~and, upon~~  
12 ~~conviction, shall be confined in a state correctional facility for not more than five years or fined not~~  
13 ~~more than \$10,000, or both.~~

14 (c) Any person who shall, by threats, menaces, or otherwise, intimidate, or attempt to  
15 intimidate, a witness for the state in any prosecution under the provisions of this article, for the  
16 purpose of preventing the attendance of such witness at the trial of such case or to change  
17 testimony, or shall in any way or manner prevent, or attempt to prevent, the attendance of any  
18 such witness at such trial, ~~shall be~~ is guilty of a class 5 felony, ~~and, upon conviction, shall be~~  
19 ~~confined not more than ten years.~~

## **ARTICLE 14. HUMAN TRAFFICKING.**

### **§61-14-2. Human trafficking of an individual; penalties.**

1 (a) Any person who knowingly and willfully traffics an adult is guilty of a class 4 felony ~~and,~~  
2 ~~upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three~~  
3 ~~nor more than fifteen years, fined not more than \$200,000, or both imprisoned and fined.~~

4 (b) Any person who knowingly and willfully traffics a minor is guilty of a class 3 felony ~~and,~~  
5 ~~upon conviction thereof, shall be imprisoned in a state correctional facility for not less than five~~  
6 ~~nor more than twenty years, fined not more than \$300,000, or both imprisoned and fined.~~

### **§61-14-3. Use of forced labor; penalties.**

1 (a) Any person who knowingly uses an adult in forced labor is guilty of a class 3 felony  
2 ~~and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than~~  
3 ~~one nor more than five years, fined not more than \$100,000, or both imprisoned and fined.~~

4 (b) Any person who knowingly uses a minor in forced labor is guilty of a class 2 felony

5 ~~and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than~~  
6 ~~three nor more than fifteen years, fined not more than \$300,000, or both imprisoned and fined.~~

**§61-14-4. Use of persons in debt bondage; penalties.**

1 (a) Any person who knowingly uses an adult in debt bondage is guilty of a class 4 felony  
2 ~~and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than~~  
3 ~~one nor more than five years, fined not more than \$100,000, or both imprisoned and fined.~~

4 (b) Any person who knowingly uses a minor in debt bondage is guilty of a class 3 felony  
5 ~~and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than~~  
6 ~~three nor more than fifteen years, fined not more than \$300,000, or both imprisoned and fined.~~

**§61-14-5. Sexual servitude; penalties.**

1 (a) Any person who knowingly uses coercion to compel an adult to engage in commercial  
2 sexual activity is guilty of a class 2 felony ~~and, upon conviction thereof, shall be imprisoned in a~~  
3 ~~state correctional facility for not less than three nor more than fifteen years, fined not more than~~  
4 ~~\$200,000, or both imprisoned and fined.~~

5 (b) Any person who knowingly maintains or makes available a minor for the purpose of  
6 engaging the minor in commercial sexual activity is guilty of a class 1 felony ~~and, upon conviction~~  
7 ~~thereof, shall be imprisoned in a state correctional facility for not less than ten nor more than~~  
8 ~~twenty years, fined not more than \$300,000, or both imprisoned and fined.~~

9 (c) It is not a defense in a prosecution under subsection (b) of this section that the minor  
10 consented to engage in commercial sexual activity, or that the defendant believed the minor was  
11 an adult.

**§61-14-6. Patronizing a victim of sexual servitude; penalties.**

1 (a) Any person who knowingly patronizes another in commercial sexual activity and who  
2 knows that such person patronized is a victim of sexual servitude, is guilty of a class 5 felony ~~and,~~  
3 ~~upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one~~  
4 ~~nor more than five years, fined not more than \$100,000, or both imprisoned and fined.~~

5 (b) Notwithstanding the provisions of subsection (a) of this section, any person who  
6 knowingly patronizes a minor to engage in commercial sexual activity and who knows or has  
7 reason to know that said minor is a victim of sexual servitude, is guilty of a class 3 felony ~~and,~~  
8 ~~upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three~~  
9 ~~nor more than fifteen years, fined not more than \$300,000, or both imprisoned and fined.~~

**§61-14-7. General provisions and other penalties.**

1 (a) Separate violations. — For purposes of this article, each adult or minor victim  
2 constitutes a separate offense.

3 (b) Aggravating circumstance. —

4 (1) Notwithstanding any provision of this code to the contrary, if an individual is convicted  
5 of an offense under this article and the trier of fact makes a finding that the offense involved an  
6 aggravating circumstance, the individual shall not be eligible for parole before serving three years  
7 one-third of the individual's sentence in a state correctional facility.

8 (2) Notwithstanding any provision of this code to the contrary, if an individual is convicted  
9 of an offense under this article and is sentenced to life without mercy, that individual is not eligible  
10 for parole.

11 (3) (2) For purposes of this subsection, “aggravating circumstance” means the individual  
12 recruited, enticed, or obtained the victim of the offense from a shelter or facility that serves  
13 runaway youths, children in foster care, the homeless or victims of human trafficking, domestic  
14 violence, or sexual assault.

15 (c) Restitution. —

16 (1) The court shall order a person convicted of an offense under this article to pay  
17 restitution to the victim of the offense.

18 (2) A judgment order for restitution may be enforced by the state or a victim named in the  
19 order to receive the restitution in the same manner as a judgment in a civil action in accordance  
20 with §61-11A-4 of this code, including filing a lien against the person, firm, or corporation against

21 whom restitution is ordered.

22 (3) The court shall order restitution under subdivision (1) of this subsection even if the  
23 victim is unavailable to accept payment of restitution.

24 (4) If the victim does not claim restitution ordered under subdivision (1) of this subsection  
25 within five years of the entry of the order, the restitution shall be paid to the Crime Victims  
26 Compensation Fund created under §14-2A-4 of this code.

27 (d) Eligibility for Compensation Fund. — Notwithstanding the definition of victim in §14-  
28 2A-3 of this code, a victim of any offense under this article is a victim for all purposes of article  
29 two-a, chapter fourteen of this code: *Provided*, That for purposes of §14-2A-14(b) of this code, if  
30 otherwise qualified, a victim of any offense under this article may not be denied eligibility solely  
31 for the failure to report to law enforcement within the designated time frame.

32 (e) Law Enforcement Notification. — ~~Should~~ If a law-enforcement officer ~~encounter~~  
33 encounters a child who reasonably appears to be a victim of an offense under this article, the  
34 officer shall notify the Department of Health and Human Resources. If available, the Department  
35 of Health and Human Resources may notify the Domestic Violence Program serving the area  
36 where the child is found.

37 (f) Forfeiture; Debarment. —

38 (1) The following are declared to be contraband and no person ~~shall~~ may have a property  
39 interest in them:

40 (A) All property which is directly or indirectly used or intended for use in any manner to  
41 facilitate a violation of this article; and

42 (B) Any property constituting or derived from gross profits or other proceeds obtained from  
43 a violation of this article.

44 (2) In any action under this section, the court may enter such restraining orders or take  
45 other appropriate action, including acceptance of performance bonds, in connection with any  
46 interest that is subject to forfeiture.

47 (3) Forfeiture actions under this section shall use the procedure set forth in §60A-7-1 *et*  
48 *seq.* of this code.

49 (4) Any person or business entity convicted of a violation of this article shall be debarred  
50 from state or local government contracts.

**§61-14-8. Immunity for minor victim of sex trafficking.**

1 (a) In a prosecution or a juvenile ~~proceeding~~ prosecution for an offense of prostitution in  
2 violation of §61-8-5(b) of this code, a minor shall may not be held criminally liable if the Court  
3 determines that the minor is a victim of an offense under this article: *Provided*, That subject to  
4 proof, a minor so charged shall be rebuttably presumed to be a victim under the provisions of this  
5 article.

6 (b) This section does not apply in a prosecution or a juvenile proceeding for any of the  
7 other offenses under §61-8-5(b) of this code, including specifically soliciting, inducing, enticing,  
8 or procuring another to commit an act or offense of prostitution, unless it is determined by the  
9 court that the minor was coerced into the criminal behavior.

10 (c) A minor who, under subsection (a) or (b) of this section, is not subject to criminal liability  
11 or adjudication as a juvenile delinquent is presumed to be an abused child, as defined in §49-1-  
12 201 of this code, and may be eligible for services under Chapter 49 of this code including, but not  
13 limited to, appropriate child welfare services.

**ARTICLE 15. MONEY LAUNDERING.**

**§61-15-2. Laundering through financial transactions.**

1 (a) It is unlawful for any person to conduct or attempt to conduct a financial transaction  
2 involving the proceeds of criminal activity knowing that the property involved in the financial  
3 transaction represents the proceeds of, or is derived directly or indirectly from the proceeds of,  
4 criminal activity:

5 (1) With the intent to promote the carrying on of the criminal activity; or

6 (2) Knowing that the transaction is designed in whole or part:

7 (i) To conceal or disguise the nature, location, source, ownership, or control of the  
8 proceeds of the criminal activity; or

9 (ii) To avoid any transaction reporting requirement imposed by law.

10 (b) Any person violating the provisions of subsection (a) of this section where the amount  
11 involved in the transaction is less than ~~\$1,000~~ \$2,500 is guilty of a class 1 misdemeanor ~~and,~~  
12 ~~upon conviction, shall be confined in jail for not more than one year or fined not more than \$1,000,~~  
13 ~~or both confined and fined.~~

14 (c) Any person violating the provisions of subsection (a) of this section where the amount  
15 involved in the transaction is not less than ~~\$1,000~~ \$2,500 nor more than ~~\$20,000~~ \$25,000 is guilty  
16 of a class 6 felony ~~and, upon conviction, shall be imprisoned in a state correctional facility for not~~  
17 ~~less than one nor more than five years, or fined not less than \$1,000 nor more than \$10,000, or~~  
18 ~~both imprisoned and fined.~~

19 (d) Any person violating the provisions of subsection (a) of this section where the amount  
20 involved in the transaction in excess of ~~\$20,000~~ exceeds \$25,000 is guilty of a class 5 felony ~~and,~~  
21 ~~upon conviction, shall be imprisoned in a state correctional facility for not less than two nor more~~  
22 ~~than ten years, or fined not less than \$5,000 nor more than \$25,000, or both imprisoned and fined.~~

## **ARTICLE 16. USE OF UNMANNED AIRCRAFT SYSTEMS.**

### **§61-16-2. Prohibited use of an unmanned aircraft system; criminal penalties.**

1 (a) Except as authorized by the provisions of this article, a person may not operate an  
2 unmanned aircraft system:

3 (1) To knowingly and intentionally capture or take photographs, images, video, or audio of  
4 another person or the private property of another, without the other person's permission, in a  
5 manner that would invade the individual's reasonable expectation of privacy, including, but not  
6 limited to, capturing, or recording through a window;

7 (2) To knowingly and intentionally view, follow, or contact another person or the private  
8 property of another without the other person's permission in a manner that would invade the

9 individual's reasonable expectation of privacy, including, but not limited to, viewing, following, or  
10 contacting through a window;

11 (3) To knowingly and intentionally harass another person;

12 (4) To violate a restraining order or similar judicial order;

13 (5) To act with a willful wanton disregard for the safety of persons or property; or

14 (6) To knowingly and intentionally operate an unmanned aircraft system in a manner that  
15 interferes with the official duties of law enforcement personnel or emergency medical personnel.

16 (b) Any person violating the provisions of subsection (a) of this section is guilty of a class  
17 1 misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than  
18 \$1,000 or confined in jail for not more than one year, or both fined and confined.

19 (c) Any person who equips an unmanned aircraft system with any deadly weapon or  
20 operates any unmanned aircraft system equipped with any deadly weapon, other than for military  
21 in an official capacity, is guilty of a class 6 felony and, upon conviction thereof, shall be fined not  
22 less than \$1,000 nor more than \$5,000 or imprisoned in a state correctional facility for not less  
23 than one nor more than five years, or both fined and imprisoned.

24 (d) Any person who operates an unmanned aircraft system with the intent to cause  
25 damage to or disrupt in any way the flight of a manned aircraft is guilty of a class 6 felony and,  
26 upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 imprisoned for  
27 not less than one nor more than five years, or both fined and imprisoned.

28 (e) A person that is authorized by the Federal Aviation Administration to operate  
29 unmanned aircraft systems for commercial purposes may operate an unmanned aircraft system  
30 in this state for such purposes if the unmanned aircraft system is operated in a manner consistent  
31 with federal law.

## **ARTICLE 17. CLASSIFICATIONS OF OFFENSES AND AUTHORIZED DISPOSITIONS**

### **OF OFFENDERS**

**§61-17-1. Classification of felonies and misdemeanors.**

1 (a) Felonies are classified, for the purpose of sentencing, into the following six categories:

2 (1) Class 1 felonies.

3 (2) Class 2 felonies.

4 (3) Class 3 felonies.

5 (4) Class 4 felonies.

6 (5) Class 5 felonies.

7 (6) Class 6 felonies.

8 (b) Misdemeanors are classified, for the purpose of sentencing, into the following three  
9 categories:

10 (1) Class 1 misdemeanors.

11 (2) Class 2 misdemeanors.

12 (3) Class 3 misdemeanors.

13 (c) Petty offenses are not classified.

**§61-17-2. Designation of offenses.**

1 (a) The classification of each felony defined in this chapter is expressly designated in the  
2 section or chapter defining it. Any offense defined outside this title which is declared by law to be  
3 a felony without either specification of the classification or of the penalty is a class 5 felony.

4 (b) The classification of each misdemeanor defined in this chapter is expressly designated  
5 in the section or chapter defining it. Any offense defined outside this chapter which is declared by  
6 law to be a misdemeanor without either specification of the classification or of the penalty is a  
7 class 2 misdemeanor.

8 (c) Every petty offense in this chapter is expressly designated as such. Any offense  
9 defined outside this chapter without either designation as a felony or misdemeanor or specification  
10 of the classification or the penalty is a petty offense.

11 (d) Any offense which is declared by law to be a felony, misdemeanor, or petty offense

12 without specification of the classification of such offense is punishable according to the penalty  
 13 prescribed for such offense.

14 (e) Any offense defined within or outside this chapter without designation as a felony,  
 15 misdemeanor or petty offense is punishable according to the penalty prescribed for such offense.

16 (f) Any offense defined outside this chapter with a specification of the classification of  
 17 such offense is punishable according to the provisions of this chapter.

**§ 61-17-3. Sentence of imprisonment for felony; presentence report; aggravating and  
 mitigating factors; consecutive terms of imprisonment; definition.**

1 (a) A sentence of imprisonment for a felony shall be a definite term of years and the  
 2 person sentenced, unless otherwise provided by law, shall be committed to the custody of the  
 3 state department of corrections.

4 (b) No prisoner may be transferred to the custody of the state department of corrections  
 5 without a certified copy of the judgment and sentence, signed by the court, and a copy of a recent  
 6 presentence investigation report unless the court has waived preparation of the report.

7 (c) The term of imprisonment sentence shall be for a determinate period, which may be  
 8 stated in a term of months, within the range prescribed under this subsection. The terms are as  
 9 follows:

Felony	Minimum	Maximum
Class 1	Life w/ Mercy	Life w/o Mercy
Class 2	15 years	60 years
Class 3	5 years	30 years
Class 4	3 years	15 years
Class 5	2 years	10 years
Class 6	1 years	5 years

**§61-17-4. Misdemeanors; sentencing.**

1 (a) A sentence of imprisonment for a misdemeanor shall be for a definite term to be served

2 other than a place within custody of the state department of corrections. The court shall fix the  
3 term of imprisonment within the following maximum limitations:

4 (1) For a class 1 misdemeanor, One year.

5 (2) For a class 2 misdemeanor, Six Months.

6 (3) For a class 3 misdemeanor, 90 days.

**§61-17-5. Class 6 felony; designation.**

1 (a) Notwithstanding any other provision of this chapter, if a person is convicted of any  
2 class 6 felony not involving a dangerous offense and if the court, having regard to the nature and  
3 circumstances of the crime and to the history and character of the defendant, is of the opinion  
4 that it would be unduly harsh to sentence the defendant for a felony, the court may enter judgment  
5 of conviction for a class 1 misdemeanor and make disposition accordingly or may place the  
6 defendant on probation in accordance with the law and refrain from designating the offense as a  
7 felony or misdemeanor until the probation is terminated. The offense shall be treated as a felony  
8 for all purposes until such time as the court may enter an order designating the offense a  
9 misdemeanor. This subsection does not apply to any person who stands convicted of a class 6  
10 felony and who has previously been convicted of two or more felonies.

11 (b) If a crime is punishable in the discretion of the court by a sentence as a class 6 felony  
12 or a class 1 misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting attorney  
13 files an information in circuit court designating the offense as a misdemeanor.

**§61-17-6. Determination of Sentence by Court.**

1 The Court shall impose a sentence within the range of minimum and maximum terms  
2 based upon aggravating and mitigating circumstances the Court finds relevant based upon the  
3 pre-sentence investigation report.

**§ 61-17-7. Offenses near Schools; offenses against children near schools; offenses**  
**against children generally; increased penalties.**

1 (a) For all crimes committed within one thousand feet of a school, the Court may consider

2 relevant circumstances and impose an increase of the potential sentence of one year for such  
3 crime: *Provided*, That such increase is permitted to result in a sentence which exceeds the  
4 specified maximum sentence limitation.

5 (b) If a child is the victim of such offense, the court may consider relevant circumstances  
6 and impose an increase of two years of the potential sentence for such crime: *Provided*, That  
7 such increase is permitted to result in a sentence which exceeds the specified maximum sentence  
8 limitation.

9 (c) If a child is the victim of any offense not committed within one thousand feet of a school,  
10 the court may consider relevant circumstances and impose an increase of two years of the  
11 potential sentence for such crime: *Provided*, That such increase is permitted to result in a  
12 sentence which exceeds the specified maximum sentence limitation.

## **ARTICLE 18. RESTITUTION AND FINES**

### **§61-18-1. Fines for felonies.**

1 (a) Unless provided otherwise sentence to pay a fine for a felony shall be a sentence to  
2 pay an amount fixed by the court not more five hundred thousand dollars.

3 (b) A judgment that the defendant shall pay a fine, with or without the alternative of  
4 imprisonment, shall constitute a lien in like manner as a judgment for money rendered in a civil  
5 action.

6 (c) This section does not apply to an enterprise.

### **§61-18-2. Fines for misdemeanors.**

1 Unless provided otherwise:

2 (a) A sentence to pay a fine for a class 1 misdemeanor shall be a sentence to pay an  
3 amount, fixed by the court, not more than two thousand five hundred dollars.

4 (b) A sentence to pay a fine for a class 2 misdemeanor shall be a sentence to pay an  
5 amount, fixed by the court, not more than seven hundred fifty dollars.

6 (c) A sentence to pay a fine for a class 3 misdemeanor shall be a sentence to pay an

7 amount, fixed by the court, not more than five hundred dollars.

8 (d) A sentence to pay a fine for a petty offense shall be a sentence to pay an amount,  
9 fixed by the court, of not more than three hundred dollars.

10 (e) A judgment that the defendant shall pay a fine, with or without the alternative of  
11 imprisonment, shall constitute a lien in like manner as a judgment for money rendered in a civil  
12 action.

13 (f) This section does not apply to an enterprise.

**§61-18-3. Fines against enterprises.**

1 (a) "Enterprise" is any entity other than an individual person.

2 (b) Except as provided, a sentence to pay a fine that is imposed on an enterprise for an  
3 offense defined in this chapter or for an offense defined outside this chapter for which no special  
4 enterprise fine is specified shall be a sentence to pay an amount, fixed by the court, of not more  
5 than:

6 (1) For a Class 1 felony, ten million dollars.

7 (2) For a Class 2 felony, five million dollars.

8 (3) For a Class 3, 4, 5, or 6 felony, one million dollars.

9 (4) For a class 1 misdemeanor, one hundred thousand dollars.

10 (5) For a class 2 misdemeanor, fifty thousand dollars.

11 (6) For a class 3 misdemeanor, ten thousand dollars.

12 (7) For a petty offense, five thousand dollars.

13 (c) A judgment that the enterprise shall pay a fine shall constitute a lien in like manner as  
14 a judgment for money rendered in a civil action.

15 (d) The court shall base its decision on any evidence or information that was introduced  
16 or submitted to it before sentencing or on any evidence that was previously heard at trial and shall  
17 consider the following factors, if relevant:

18 (1) The income and assets of the enterprise and the economic impact of the penalty on

19 the enterprise.

20 (2) Any prior criminal, civil or regulatory misconduct by the enterprise.

21 (3) The degree of harm resulting from the offense.

22 (4) Whether the offense resulted in pecuniary gain.

23 (5) Whether the enterprise made good faith efforts to comply with any applicable  
24 requirements.

25 (6) The duration of the offense.

26 (7) The role of the directors, officers, or principals of the enterprise in the offense.

27 (8) Whether the offense involved an unusually vulnerable victim due to age, physical or  
28 mental condition or any other factor that would make the victim particularly susceptible to criminal  
29 conduct.

30 (9) Whether the offense involved a threat to a market.

31 (10) Whether the enterprise breached a fiduciary duty in committing the offense.

32 (11) The obligation of the enterprise to pay restitution.

33 (12) Any other factors that the court deems appropriate.

**§61-18-4. Reimbursement of incarceration costs; misdemeanors.**

1 (a) The court shall order a person who is convicted of a misdemeanor offense and who  
2 is sentenced to a term of incarceration to reimburse the political subdivision that is responsible  
3 for the costs of the person's incarceration for the incarceration costs.

4 (b) The court may determine the amount of incarceration costs to be paid based on the  
5 following factors:

6 (1) The per diem per person cost of incarceration incurred by the political subdivision that  
7 incarcerates the person.

8 (2) The person's ability to pay all or part of the incarceration costs.

NOTE: The purpose of this bill is to create classes of misdemeanor and felony offenses

and to amend the various provisions relating to crimes and their punishments.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.